

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CLARK LANDIS, ROBERT BARKER,  
GRADY THOMPSON, and KAYLA BROWN,

Plaintiffs,

v.

WASHINGTON STATE MAJOR LEAGUE  
BASEBALL STADIUM PUBLIC  
FACILITIES DISTRICT; and BASEBALL OF  
SEATTLE, INC., a duly licensed Washington  
corporation, d.b.a. Mariners Baseball, LLC, a  
duly licensed Washington limited liability  
company, d.b.a. The Baseball Club of Seattle,  
LLLP, a duly licensed Washington limited  
liability limited partnership,

Defendants.

NO. 2:18-cv-01512-BJR

**DECLARATION OF STEPHEN C.  
WILLEY IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
MOTION FOR SUMMARY  
JUDGMENT**

NOTE ON MOTION CALENDAR:  
June 14, 2019

I, STEPHEN C. WILLEY, declare as follows:

1. I am a partner in the law firm Savitt Bruce & Willey LLP, counsel to Defendants in this matter. I am competent to testify and make this declaration based on personal knowledge.

2. I deposed James Terry, Plaintiffs' expert, on June 14, 2019. Mr. Terry previously submitted a declaration in support of Plaintiffs' Motion for Summary Judgment (*see* ECF-20) and his deposition testimony is pertinent to several of the issues in dispute.

DECLARATION OF STEPHEN C. WILLEY - 1  
(No. 2:18-cv-01512-BJR)

SAVITT BRUCE & WILLEY LLP  
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(206) 749-0500

3. A true and correct copy of the transcript of Mr. Terry's deposition is attached hereto as *Exhibit A*.

4. As a general matter, Mr. Terry testified that he has not visited T-Mobile Park during the current 2019 baseball season and has not been at the stadium during a baseball game. Ex. A at 18:17-23.

5. With respect to sightlines:

- Mr. Terry testified that Section 4.33.3 of the 1991 ADA Standards requires a sightline over standing spectators. Ex. A. at 42:16-19. Mr. Terry acknowledges that those words do not appear in Section 4.33.3. *Id.* at 42:23 – 43:6.
- Mr. Terry testified that Section 4.33.3 contains no detail or guidance as to what comprises compliant sightlines. *Id.* at 43:7-23.
- Mr. Terry could not identify any statutory requirement, regulation or DOJ guidance in effect at the time T-Mobile Park was designed and built other than: (a) the 1991 Standards, (b) the 1993 Technical Assistance Manual, (c) the 1994 Supplement to the Technical Assistance Manual, and (d) the 1996 Accessible Stadiums document issued by the DOJ. *Id.* at 58:13 – 63:6.<sup>1</sup>
- Mr. Terry testified that he had previously provided the same testimony (*i.e.*, that Section 4.33.3 requires sightlines over standing spectators) in the case *Independent Living Resources v. Oregon Arena Corporation*, 982 F.Supp. 698 (D. Ore. 1997) and that the Court disagreed with him.<sup>2</sup> *Id.* at 63:9 – 64:18.
- Mr. Terry further testified that “Yes, that is was the Judge’s opinion in that case. And so in that Circuit for the period of time, you know, my understanding is that is the way it was interpreted until it was relitigated.” *Id.* at 65:5-8; *see also id.* at 65:9 – 66:12.

<sup>1</sup> See also Defendants’ Opposition to Motion for Summary Judgment (ECF-21) at 8:9 – 10:3.

<sup>2</sup> 982 F.Supp. at 758 (“Standard 4.33.3 does not presently require that wheelchair users be given lines of sight over standing spectators.”)

- Regarding his sightline analysis, Mr. Terry testified that his analysis would differ and measured sightlines would improve if the measuring point for the wheelchair spectator varied (*e.g.*, the wheelchair user moved forward within the seating area) or the position of the putative standing spectator varied (*e.g.*, the standing spectator moved forward). *Id.* at 75:13 – 83:10. Mr. Terry testified that he did not assess sightline analysis with any lateral movement for the spectator because “there would have been no point in doing that.” *Id.* at 79:5-9. Mr. Terry acknowledged, however, that accessible seating at T-Mobile Park is flex seating (*i.e.*, non-fixed) and that moving a wheelchair user laterally would make a difference in sightline. *Id.* at 80:16 – 83:23.
- Mr. Terry has not identified any remedy—“no specific design solutions”—to address sightlines. *Id.* at 66:13 – 68:23.

6. With respect to **accessible seating distribution**:

- Mr. Terry testified that his opinions were premised on a “hybrid kind of analysis” that mixed the 1991 Standards and the 2010 Standards. Ex. A at 130:3-19. Mr. Terry further testified that the 2010 standards require vertical dispersal to all levels that are served by an accessible route, whereas the 1991 standards were “performance standards” that did not provide any such directive or guidance.<sup>3</sup> *Id.* at 130:20 – 132:2.
- Mr. Terry testified that “[w]ith limited exceptions, I would say that it [T-Mobile Park] has good horizontal distribution.” *Id.* at 94:16 – 95:4.
- Mr. Terry testified that the 200 Level and the 300 Level at T-Mobile Park meet the standards for vertical dispersal of accessible seating. *Id.* at 126:9 – 128:1.
- Mr. Terry testified that, in his opinion, the 100 Level seats do not have sufficient vertical dispersal, but he did not have a proposed remedy and has not done any sort of feasibility study. *Id.* at 121:14 – 122:22; 128:11-13.

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<sup>3</sup> See also Declaration of Malcolm Rogel (ECF-22) at ¶¶ 4-11.

- Plaintiffs’ Motion for Summary Judgment argues that “to become even arguably compliant with either the 1991 or 2010 ADA Standards, T-Mobile Park must offer a dramatically increased number of wheelchair accessible seats closer to the playing field – for instance by increasing the proportion of wheelchair accessible seating within the first 15 rows of the field from 0.115% to 16%.” ECF-10 at 13:4-7. In his deposition, Mr. Terry testified that he had not done this calculation, “so I can’t say whether I agree with it or not.” Ex. A at 132:3-16. Mr. Terry testified that the Plaintiffs’ assertion “sounds like it is probably right for the 2010 Standards for vertical dispersal for new construction” but “I don’t have an opinion, I haven’t studied it.” *Id.* at 132:17 – 133:9.

7. With respect to **ticket pricing for accessible seating**:

- Mr. Terry testified that his opinion was based on the “preamble” to the 2010 regulations and having read “thousands and thousands of pages on this topic over the last 29 years.” Ex. A at 102:5-15; 106:11-16; 110:12 – 112:6.
- Mr. Terry testified that the factual predicate for the opinion in his report was a search he did on Ticketmaster on April 16, 2019 for a single game on May 28, 2019. *Id.* at 99:2 – 100:15; 112:20 – 114:18.

8. In his declaration submitted to the Court, Mr. Terry opined regarding a “Shortstop Beer” stand at T-Mobile Park. ECF-20 at ¶ 20. In his deposition, however, Mr. Terry testified that (a) his expert report made no mention of a “Shortstop Beer” stand; (b) he was not sure if he had measured a “Shortstop Beer” stand; and (c) he did not have knowledge as to whether the “Shortstop Beer” stand was compliant with the ADA. Ex. A at 34:14 – 38:3.<sup>4</sup>

9. In his declaration submitted to the Court, Mr. Terry opined regarding Edgar’s Cantina and Edgar’s Home Run Porch. ECF-20 at ¶¶ 25-28. In his deposition, however, Mr. Terry testified that (a) his expert report did not state any opinion regarding table heights or counter heights for Edgar’s Cantina or Edgar’s Home Run Porch; and (b) these cafes were not

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<sup>4</sup> See also Declaration of Trevor Gooby (ECF-25) at ¶ 14.

1 set up and operational on the day he visited T-Mobile Park (February 5, 2019). Ex. A at 26:15  
2 – 32:21.<sup>5</sup>

3 10. In his declaration submitted to the Court, Mr. Terry opined regarding 200 level  
4 drink rails. ECF-20 at ¶ 31. In his deposition, however, Mr. Terry testified that he had  
5 erroneously assumed that there was wait service at the rails and, as a result, Section 5.2 of the  
6 1991 Standards was inapplicable. Ex. A at 158:12 – 160:20.<sup>6</sup>

7 11. In his expert report, Mr. Terry opined that queue line stanchions created a  
8 concession line barrier. ECF-20 at Ex. A (at p.23); *see also* Plaintiff's Motion for Summary  
9 Judgment (ECF-19) at 17:15 – 18:2. In his deposition, however, Mr. Terry testified that he had  
10 no personal knowledge of the stanchion placement for queue lines at T-Mobile Park, had never  
11 measured any stanchion placement, and that his opinion was based on looking at two  
12 photographs taken by someone else at one game in August 2018. Ex. A at 160:21 – 162:21.<sup>7</sup>

13 **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE**  
14 **UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND**  
15 **CORRECT.**

16 Executed this 21<sup>st</sup> day of June, 2019 at Seattle, Washington.

17 /s/ Stephen C. Willey  
18 Stephen C. Willey  
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26 <sup>5</sup> *See also* Gooby Declaration at ¶¶ 15, 16.

27 <sup>6</sup> *See also* Gooby Declaration at ¶ 17.

<sup>7</sup> *See also* Gooby Declaration at ¶ 18.

# EXHIBIT A

**James Terry****6/14/2019**

Pages 1 to 4

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 WESTERN DISTRICT OF WASHINGTON</p> <p>3 AT SEATTLE</p> <p>4</p> <p>5 CIVIL ACTION NO: 2:18-CV-01512</p> <p>6</p> <p>7 CLARK LANDIS, ROBERT BARKER, GRADY THOMPSON, AND</p> <p>8 KAYLA BROWN,</p> <p>9 Plaintiff,</p> <p>10 vs.</p> <p>11 WASHINGTON STATE MAJOR LEAGUE BASEBALL STADIUM</p> <p>12 PUBLIC FACILITIES DISTRICT AND THE BASEBALL CLUB OF</p> <p>13 SEATTLE, LLP,</p> <p>14 Defendants.</p> <p>15</p> <p>16 DEPOSITION</p> <p>17 OF</p> <p>18 JAMES TERRY</p> <p>19 BIRMINGHAM, ALABAMA</p> <p>20 JUNE 14, 2019</p> <p>21</p> <p>22 REPORTED BY: Caila Bonds</p> <p>23 Court Reporter</p>	<p style="text-align: right;">Page 2</p> <p>1 STIPULATIONS</p> <p>2</p> <p>3 IT IS STIPULATED AND AGREED by and</p> <p>4 between the parties through their respective counsel</p> <p>5 that said deposition may be taken before Caila</p> <p>6 Bonds, Court Reporter;</p> <p>7 That the signature to and the reading</p> <p>8 of the deposition by the witness is waived, the</p> <p>9 deposition to have the same force and effect as if</p> <p>10 full compliance had been had with all laws and rules</p> <p>11 of Court relating to the taking of depositions:</p> <p>12 That it shall not be necessary for any</p> <p>13 objections to be made by counsel to any questions,</p> <p>14 except as to form or leading questions, and that</p> <p>15 counsel for the parties may make objections and</p> <p>16 assign grounds at the time of trial, or at the time</p> <p>17 said deposition is offered in evidence or prior</p> <p>18 thereto.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 MR. CONRAD REYNOLDSON</p> <p>4 Washington Civil &amp; Disability Advocate</p> <p>5 4115 Roosevelt Way NE</p> <p>6 Suite B</p> <p>7 Seattle, Washington 98105</p> <p>8</p> <p>9 FOR THE DEFENDANT:</p> <p>10 MR. STEVE WILLEY</p> <p>11 Savitt, Bruce &amp; Willey, LLP</p> <p>12 Joshua Green Building</p> <p>13 1425 Fourth Avenue</p> <p>14 Suite 800</p> <p>15 Seattle, Washington 98101</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 4</p> <p>1 EXAMINATION INDEX</p> <p>2</p> <p>3 JAMES TERRY</p> <p>4</p> <p>5 DIRECT BY MR. WILLEY ..... 5</p> <p>6</p> <p>7 EXHIBIT INDEX</p> <p>8 Defendant's</p> <p>9 3 Plaintiff's Motion for Summary Judgement 10</p> <p>10 2 Declaration 11</p> <p>11 1 Expert Report 14</p> <p>12 4 Diagram of the field 95</p> <p>13 5 Diagram of the field 95</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

**James Terry****6/14/2019**

Pages 5 to 8

<p style="text-align: right;">Page 5</p> <p>1 I, Caila M. Bonds, a Court Reporter of  2 Birmingham, Alabama, and a Notary Public for the  3 State of Alabama, acting as Commissioner, certify  4 that on this date, pursuant to Rule 30 of the  5 Alabama Rules of Civil Procedure and the foregoing  6 stipulation of counsel, there came before me at  7 Office of Birmingham Reporting Services, 600 20th  8 Street North, Birmingham, Alabama, on the 14th day  9 of June, 2019, commencing at around 2:30 p.m., JAMES  10 TERRY, witness in the above cause, for oral  11 examination, whereupon the following proceedings  12 were had:</p> <p>13</p> <p>14 JAMES TERRY,  15 being first duly sworn, was examined and testified  16 as follows:</p> <p>17</p> <p>18 DIRECT EXAMINATION  19 BY MR. WILLEY:  20 Q. Good afternoon, Mr. Terry, my name is  21 Steve Willey and I represent the Defendant's in this  22 matter. Could you please state your full name for  23 the record?</p>	<p style="text-align: right;">Page 6</p> <p>1 A. It is James Leslie Evan Terry.  2 Q. And you are employed by Evan Terry  3 Associates, LLC?  4 A. Yes.  5 Q. And you are the CEO of that entity?  6 A. That is correct.  7 Q. Who are the members of the LLC?  8 A. Neal H. King Jr., Jeffrey Fowler and Todd  9 Hollingsworth, and I can't remember their middle  10 initials.  11 Q. That is okay. Are you also a member?  12 A. I am, uh-huh.  13 Q. Have you been deposed before?  14 A. Yes.  15 Q. How many times, roughly?  16 A. Roughly fifteen, could be ten, could be  17 twenty, but I think it is around fifteen.  18 Q. Fair enough. When were you most recently  19 deposed?  20 A. Good question, I think that is in my  21 report. It was possibly -- yeah, I need to look at  22 my report to tell you. It has been within the last  23 six months or so.</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Okay. Fair enough. You probably know the  2 drill here, but for record and to make sure we are  3 on the same page we walk through it, this is an  4 opportunity for me to ask questions and for you to  5 answer them. If you do not understand a question,  6 please let me know. I will do my best to rephrase  7 or --  8 A. Let me turn the volume down.  9 Q. You recognize that the oath you have  10 taken is the same as in the Court of law, felony of  11 perjury?  12 A. Yes, I do.  13 Q. And if you will do this, let me finish my  14 question and I will do my best to let you finish  15 your answer, okay?  16 A. Okay.  17 Q. That makes it easier for the Court  18 Reporter who is doing her best to transcribe this in  19 a clear fashion.  20 A. Yes.  21 Q. It is possible there may be objections by  22 Mr. Reynoldson, and if so, you still need to answer  23 the question unless Mr. Reynoldson advises you not</p>	<p style="text-align: right;">Page 8</p> <p>1 to.  2 A. Okay.  3 Q. All right. How did you prepare for  4 today's deposition?  5 A. Kind of briefly glanced back through my  6 report, and looked at just some of the other  7 documents that I have been collecting in going  8 through this, and talked, yesterday, to Conrad and  9 to Steve Conner to find out, you know, how they  10 wanted me to approach the deposition, because  11 sometimes different attorneys have different  12 approaches, you know, short answer versus long and  13 detailed, teaching sessions, basically was the  14 question.  15 Q. Fair enough. I don't want to know about  16 your communication with Conrad or Steve.  17 A. Okay. All right.  18 Q. Did you meet or communicate with anyone  19 else to prepare for today's deposition?  20 A. I don't recall anything where I -- I  21 certainly didn't meet with anybody, but as to -- I  22 don't think I talked to anybody in preparation for  23 this. I talked to some people in preparation for my</p>



**James Terry****6/14/2019**

Pages 9 to 12

Page 9	Page 10
<p>1 report, but not in preparation for the deposition.</p> <p>2 Q. A couple of answers ago you mentioned</p> <p>3 looking at other documents, what are the other</p> <p>4 documents you looked at beyond your report?</p> <p>5 A. Documents that were referenced in my</p> <p>6 report, as well as some other documents that were in</p> <p>7 response to things that Mr. Endelman had said where</p> <p>8 I had a different recollection and I was trying to</p> <p>9 check source documents.</p> <p>10 Q. Okay. Do you recall in particular</p> <p>11 anything you looked at?</p> <p>12 A. Looking at documents, for example, AIA</p> <p>13 memo talking about complaints in stadiums related to</p> <p>14 lack of sightline over standing spectators, looked</p> <p>15 at -- I guess, graphic standards and human scale</p> <p>16 were both in the -- in my report. Looked at some</p> <p>17 articles and newspapers related to Department of</p> <p>18 Justice positions in relation to line of sight over</p> <p>19 standing spectators in the early 90's.</p> <p>20 Q. Okay. Did you review any legal papers?</p> <p>21 A. Legal papers meaning what?</p> <p>22 Q. A motion, a declaration, anything of that</p> <p>23 sort, legal papers within this case?</p>	<p>1 A. Within this case? No.</p> <p>2 Q. Yes. Did you review the plaintiff's</p> <p>3 motion for summary judgment?</p> <p>4 A. No, I don't think so, unless it has been</p> <p>5 a long time ago. I haven't reviewed anything lately.</p> <p>6 Q. Did you review it before it was filed?</p> <p>7 A. I don't know -- how long ago would the</p> <p>8 document you are talking about have been filed? I</p> <p>9 mean, there are lots of legal papers that go back.</p> <p>10 I don't know what you are talking about. If you have</p> <p>11 a copy of it, I can maybe look at it and see if I</p> <p>12 know what you are talking about.</p> <p>13 Q. Sure. That would be Exhibit 3.</p> <p>14 (Defendant's Exhibit 3 was marked</p> <p>15 for identification.)</p> <p>16 Q. This document, Mr. Terry, was filed on</p> <p>17 May 20 of this year, 2019.</p> <p>18 A. Okay. I see that date on it.</p> <p>19 Q. And the question is only did you review</p> <p>20 this before it was filed?</p> <p>21 A. And I am trying to look through it to see</p> <p>22 if anything looks familiar.</p> <p>23 Q. Well, let me do this, if the Court</p>
Page 11	Page 12
<p>1 Reporter would also hand Mr. Terry Exhibit 2.</p> <p>2 (Defendant's Exhibit 2 was marked</p> <p>3 for identification.)</p> <p>4 Q. Exhibit 2, Mr. Terry, is a declaration</p> <p>5 that is in your name and was filed in support for</p> <p>6 the motion for summary judgment that is Exhibit 3.</p> <p>7 Is that your signature on page five?</p> <p>8 A. Yes, it is, and I did review this</p> <p>9 document.</p> <p>10 Q. Okay. So you did review the declaration,</p> <p>11 it was correct and accurate when filed?</p> <p>12 A. Yes, as -- when I signed it it was. I</p> <p>13 haven't read through it to make sure that everything</p> <p>14 is exactly the same as what I signed, but yeah, we</p> <p>15 worked on this one together to make sure that it</p> <p>16 was -- that it was, you know, accurate and expressed</p> <p>17 opinions.</p> <p>18 Q. Okay. And so my question then goes back</p> <p>19 to the prior document, did you review that motion</p> <p>20 before it was filed?</p> <p>21 A. I don't recognize it. I am looking to try</p> <p>22 to see -- yeah, this looks like it is all legal</p> <p>23 stuff and I am not a lawyer, so I don't --</p>	<p>1 Q. My question --</p> <p>2 A. I don't retain the legal -- I don't</p> <p>3 retain the legal pleadings and references and all</p> <p>4 those kind of things that are in the front. Let me</p> <p>5 see the other things in here. I don't recall</p> <p>6 reviewing this, at least not in this form. There</p> <p>7 may have been things that we talked about in it, but</p> <p>8 I am still only on page fifteen of twenty-three, so.</p> <p>9 Q. I am really not asking you to read it</p> <p>10 all, all though you are welcome to. What I am</p> <p>11 interested in is whether you reviewed it and what I</p> <p>12 understand is you are not sure?</p> <p>13 A. I am not sure.</p> <p>14 Q. Fair enough. So you don't have an opinion</p> <p>15 about whether or not there is anything in that that</p> <p>16 you disagree with?</p> <p>17 A. Unless I read it, no, I -- I have not had</p> <p>18 a circumstance where I disagreed with something and</p> <p>19 they disagreed with that without explaining, so I</p> <p>20 mean, I don't -- I haven't had a circumstance where</p> <p>21 we -- I disagreed with something that they were</p> <p>22 writing that they showed me. That was -- that they</p> <p>23 didn't change, so, but again, we have mainly been</p>

**James Terry****6/14/2019**

Pages 13 to 16

<p style="text-align: right;">Page 13</p> <p>1 dealing with, like, this declaration and so, but I</p> <p>2 don't know. I can't -- unless I read this and use my</p> <p>3 reference materials to see exactly what they are</p> <p>4 referring to in the things that they put here, but I</p> <p>5 don't recall reviewing this document as it stands in</p> <p>6 front of me now.</p> <p>7 Q. Fair enough. Did you review any of the</p> <p>8 declarations that were filed by the Defendant's in</p> <p>9 their response to that motion?</p> <p>10 A. To this motion?</p> <p>11 Q. Yes. For example, did you review Malcolm</p> <p>12 Rogel's declaration?</p> <p>13 A. I don't remember it. If you can put it in</p> <p>14 front of me, it might refresh my memory.</p> <p>15 Q. Did you review Trevor Gooby's</p> <p>16 declaration?</p> <p>17 A. I don't recognize that name and I don't</p> <p>18 believe so, but I would have to see it to know if</p> <p>19 there was something in there that I was supposed to</p> <p>20 have learned that I don't know yet or didn't know. I</p> <p>21 don't --</p> <p>22 Q. Fair enough.</p> <p>23 A. -- recall.</p>	<p style="text-align: right;">Page 14</p> <p>1 Q. If the Court Reporter would provide the</p> <p>2 witness with Exhibit 1.</p> <p>3 (Defendant's Exhibit 1 was marked</p> <p>4 for identification.)</p> <p>5 A. Okay. I have it.</p> <p>6 Q. Exhibit 1, Mr. Terry, is labeled as the</p> <p>7 expert report of James L. E. Terry, is that your</p> <p>8 expert report?</p> <p>9 A. It is, at least the first page is.</p> <p>10 Q. Well, you are welcome to flip through it</p> <p>11 to make sure it is complete.</p> <p>12 A. You know, it is funny, I had a deposition</p> <p>13 some years back where I was asked to, you know,</p> <p>14 testify that something was mine and it was not. Most</p> <p>15 of it was, but not all of it, so I try to be</p> <p>16 cautious about an answer like that. This appears to</p> <p>17 be the document. I am still going through, but this</p> <p>18 appears be my report.</p> <p>19 Q. It should have thirty-two pages of text</p> <p>20 and then it has attachments?</p> <p>21 A. This document does have thirty-two pages</p> <p>22 of text -- I am checking to see if they are all</p> <p>23 here -- text and images, and then there are</p>
<p style="text-align: right;">Page 15</p> <p>1 attachments to it, I am looking to see if all of</p> <p>2 those are here. The thirty-two pages are there.</p> <p>3 Somebody has gone to some trouble to print some of</p> <p>4 the attachments in 8 and a half by 11 to make it</p> <p>5 easier to copy, I am sure. Looks like it is all</p> <p>6 here.</p> <p>7 Q. Very good. If you would turn to section</p> <p>8 two of your report, which begins on page five.</p> <p>9 A. Okay. I am there.</p> <p>10 Q. Is section two accurate and complete</p> <p>11 regarding scope of your assignment?</p> <p>12 A. It is the scope of what the questions</p> <p>13 that I was asked to answer in my report.</p> <p>14 Q. Got it. And does the report contain all</p> <p>15 of your opinions?</p> <p>16 A. Oh no. No, I mean, if somebody asked me a</p> <p>17 question in, you know, in trial or wherever else, I</p> <p>18 will do my best to answer it, and if that involves</p> <p>19 an opinion, I will give that. I mean, I have had a</p> <p>20 number of cases where a judge would ask me a</p> <p>21 question and I answer it. And if that opinion isn't</p> <p>22 one that was in my report, I -- I still feel like I</p> <p>23 need to be able to answer it. Or if --</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Have you developed to date any opinions</p> <p>2 about this matter that are not in your report?</p> <p>3 A. Yes.</p> <p>4 Q. What are they?</p> <p>5 A. I had some opinions about things that</p> <p>6 Mr. Endelman said in his report that were different</p> <p>7 from his opinions.</p> <p>8 Q. Let me put it this way, are there</p> <p>9 opinions that you plan to offer to the Court that</p> <p>10 you have developed to date that are not in your</p> <p>11 report?</p> <p>12 A. You know, that is a legal question and I</p> <p>13 am not sure exactly what it means. Like I said, if</p> <p>14 the judge asks me a question, I will do that. I am</p> <p>15 not preparing any kind of documents right now and</p> <p>16 haven't prepared any documents that I am going to</p> <p>17 submit. I mean, one question I always ask is, hey,</p> <p>18 do I need to do rebuttals, do I need to do anything</p> <p>19 else, and I don't know of anything like that that --</p> <p>20 that I am being asked to report as additional</p> <p>21 opinions beyond what is in here.</p> <p>22 Q. Let me put it this way, if we were to</p> <p>23 have a trial tomorrow and you were to go on the</p>

James Terry

6/14/2019

Pages 17 to 20

<p style="text-align: right;">Page 17</p> <p>1 stand and I were to ask you to please give your</p> <p>2 opinions about this case that you are prepared to</p> <p>3 offer as an expert witness, are they all in your</p> <p>4 report or are there some that I don't know about?</p> <p>5 A. You know, I am not sure what you mean if</p> <p>6 I were being asked to give my opinions in this</p> <p>7 report. I mean, the opinions that are written here</p> <p>8 are the only opinions that I have written, they are</p> <p>9 the only ones that I have been asked to write, and I</p> <p>10 don't know schedule wise what might happen, what new</p> <p>11 information might come up, but if we went to trial</p> <p>12 tomorrow, I don't have anything else that is not</p> <p>13 here, but if I am asked a question, my job as an</p> <p>14 expert is to answer the question. And if that</p> <p>15 question is an opinion or a fact or whatever, my</p> <p>16 understanding is that I am supposed to answer it. So</p> <p>17 --</p> <p>18 Q. But I am not asking you right or wrong, I</p> <p>19 am only asking about the facts and what I understand</p> <p>20 you to say is you don't know what will happen in the</p> <p>21 future, but as of today your opinions are as in your</p> <p>22 report?</p> <p>23 A. Other than what we have already talked</p>	<p style="text-align: right;">Page 18</p> <p>1 about in relation to other opinions that I have not</p> <p>2 put under my report because they were in response to</p> <p>3 documents that came after my report, other than</p> <p>4 those kinds of things, then I have no other opinions</p> <p>5 that I am planning to present.</p> <p>6 Q. Okay. You are not preparing a</p> <p>7 supplemental report?</p> <p>8 A. I am not.</p> <p>9 Q. Okay. Thank you. Your report mentions</p> <p>10 that you visited T Mobile Park on February 5, 2019;</p> <p>11 is that right?</p> <p>12 A. Yes.</p> <p>13 Q. It was a brisk winter day, as I recall?</p> <p>14 A. Ahh, yes.</p> <p>15 Q. That visit was not during a game, was it?</p> <p>16 A. It was not.</p> <p>17 Q. Have you ever visited T Mobile Park</p> <p>18 during a game?</p> <p>19 A. I don't believe so.</p> <p>20 Q. And you have not visited the park during</p> <p>21 a game during the 2019 season, correct?</p> <p>22 A. I have not.</p> <p>23 Q. Okay. So you don't have any knowledge,</p>
<p style="text-align: right;">Page 19</p> <p>1 personal knowledge, of what is occurring within the</p> <p>2 stadium during the current season, correct?</p> <p>3 A. When you say what is occurring, what do</p> <p>4 you mean?</p> <p>5 Q. For example, you don't know how tables</p> <p>6 are set up or where mobile concessions are stationed</p> <p>7 or what is being shown on the TV screens, any of</p> <p>8 those things, in 2019, you do not have personal</p> <p>9 knowledge of?</p> <p>10 A. Those things I do not.</p> <p>11 Q. Okay. Who is Brenda Cummings?</p> <p>12 A. Brenda is a consultant that we used to</p> <p>13 accessibility consulting work, survey work with us</p> <p>14 primarily. She was formerly an employee at Evan</p> <p>15 Terry Associates before she moved and now lives in</p> <p>16 the Seattle area.</p> <p>17 Q. Got it. There is a reference in the</p> <p>18 report to her visiting a game on August 5, 2018; is</p> <p>19 that correct?</p> <p>20 A. That is correct.</p> <p>21 Q. Was Ms. Cummings working for you at the</p> <p>22 time?</p> <p>23 A. She was, as a consultant.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Okay. Got it. So did she visit T Mobile</p> <p>2 Park at your direction?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And how did you obtain information</p> <p>5 from Ms. Cummings?</p> <p>6 A. A discussion with her and then she</p> <p>7 uploaded her photographs so that I could see those,</p> <p>8 and there may have been more than one discussion</p> <p>9 with her actually.</p> <p>10 Q. Okay. Did she provide you information</p> <p>11 other than a discussion and the uploaded</p> <p>12 photographs?</p> <p>13 A. I don't recall any kind of written</p> <p>14 report. Again, that has been a year almost and --</p> <p>15 but I don't recall any kind of written report.</p> <p>16 Q. How many cases or matters are you</p> <p>17 currently working on, Mr. Terry?</p> <p>18 A. Depends on how you define that. There are</p> <p>19 active cases that I am working on, cases, matters,</p> <p>20 investigations, clients that I would have, for</p> <p>21 example, time charged to in a given two month</p> <p>22 period, probably, I don't know, fifteen, twenty in</p> <p>23 say for the last two months, just -- that is a</p>

**James Terry****6/14/2019**

Pages 21 to 24

<p style="text-align: right;">Page 21</p> <p>1 guess. The office would have more than that, many 2 of those that I wouldn't be involved in directly. 3 Q. No, I am interested just in yours for the 4 moment. 5 A. Uh-huh. 6 Q. What portion of your practice, Mr. Terry, 7 is functioning as an expert witness? 8 A. Over the last 25 years, probably in the 9 two to three percent range. In the last six months, 10 my personal time has been much more than that for 11 some reason. I don't know why. 12 Q. Well, when you say much more, what do you 13 mean? 14 A. Maybe five times that much, maybe six or 15 eight times that much. Well, excuse me, times that 16 much, no, I would have to look at my time sheet to 17 see, but a significantly higher percentage of my 18 time just recently than has normally been the case. 19 Q. What other components of your practice 20 are not acting as an expert witness? I am looking 21 for categories here. 22 A. Plan reviews, ADA plan reviews, where we 23 are looking at proposed construction, surveying of</p>	<p style="text-align: right;">Page 22</p> <p>1 existing facilities to help clients identify various 2 people with disabilities and help them figure out 3 how to keep track of those, remove those, and just 4 kind of manage the whole process, figure out what 5 the best way to do it is. That is the majority of 6 the work that we do. We are doing some work with a 7 company that we started called Corada that is 8 producing -- is coming up with software to help ADA 9 coordinators do their job with certification of 10 products as compliant with accessibility standards 11 and also with just providing information about 12 accessibility standards and the ADA to the general 13 public. And so I have spent more time than normal 14 with that, because of -- we are launching some of 15 those features on Sunday at the National Symposium. 16 Other things, some internal consulting, a good bit 17 of training. So I do training at most of the 18 National Associations Conferences and some web based 19 training. And then just a fair amount of just 20 consulting where people have questions they need 21 answers to -- related to accessibility. But all of 22 my work is now accessibility related. I am not doing 23 regular practice of architecture anymore.</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Thank you. If I could direct your 2 attention to section four of your report that is on 3 pages eight and nine. 4 A. Yes. 5 Q. You have some quotations here, several 6 quotations within this section four, what are you 7 quoting? 8 A. The section that is listed above it. 9 Q. And section 36.401 you are quoting there? 10 A. Yes. 11 Q. And is that the 2010 standards or the 12 1991 standards? 13 A. You know, I can't recall which it is and 14 I don't recall any changes to those paragraphs in 15 the 2010 standards. But I would have to -- I would 16 have to look that up to see. I mean, I drafted this 17 some time back for an expert report when somebody 18 questions, well, you know, why is an architect 19 somebody who should be able to opine about the ADA. 20 Q. And I understand, all I was asking you 21 was what standard you were quoting from and you are 22 telling me you are not sure, you would have to look 23 it up?</p>	<p style="text-align: right;">Page 24</p> <p>1 A. It is either the -- well, they are not 2 standards, this is from the regulations, and so it 3 is either the '91 section from the regulations or 4 the preamble from that or it is the 2010 and I don't 5 recall which of those it is. That is easy to find 6 out though. 7 Q. Okay. And as I understand, you are not a 8 lawyer; is that correct? 9 A. That is correct. 10 Q. Okay. And so none of your opinions are 11 legal opinions, correct? 12 A. I try to stay away from legal opinions 13 and I am telling you the opinions of an expert under 14 the ADA and other accessibility standards. 15 Q. I am just clarifying, you are not 16 offering legal opinions, that is all. 17 A. I am not. 18 Q. Okay. You have a quotation here at the 19 bottom of that section four, right, that talks about 20 architects having a quote, professional 21 responsibility to possess independent understanding 22 of the facility related requirements of the ADA if 23 they are to practice their profession; do you see</p>

James Terry

6/14/2019

Pages 25 to 28

Page 25

1 that?

2 A. I do.

3 Q. What does that mean?

4 A. There is a lot of information that an  
5 architect is responsible for understanding and  
6 applying in the buildings that they are designing or  
7 the facilities they are designing, if they are not  
8 buildings. And the architect is expected to know  
9 those, to understand those in order to be able to do  
10 their job. Just like you have to know the building  
11 code, you have to understand that in order to be  
12 able to design a building that complies with it. The  
13 ADA isn't a building code, but it is in a similar  
14 way there is information both in the standards and  
15 in the regulations that an architect has got to  
16 know. A lot of the things that people would think  
17 would be in the standards are actually not there,  
18 but they are in the regulations. And so it is my  
19 opinion that to perform professional services, you  
20 have got to be aware of those kind of things. And  
21 in fact, most contracts now require the architect to  
22 agree that they are designing in compliance with  
23 these.

Page 26

1 Q. There is a phrase here I am trying to  
2 understand, it is independent understanding, and you  
3 mean independent as in the individual or independent  
4 of something, like independent of standards; what  
5 does independent mean?

6 A. Independent understanding, meaning as a  
7 professional you are personally responsible for  
8 understanding it without having to ask your client's  
9 attorney or your own attorney at every turn what  
10 this means from a legal standpoint in order to be  
11 able to practice. You have got to get a familiarity  
12 with these regulations and standards so that you can  
13 do that without burdening the client to interpret  
14 every single piece of it.

15 Q. Okay. If you could look at your  
16 declaration please, it is Exhibit 2.

17 A. I am there.

18 Q. Okay. In Paragraph twenty-five.

19 A. Yes.

20 Q. And in paragraph twenty-six and twenty-  
21 seven and twenty-eight, you talk about what the  
22 tables are in Edgar's Cantina and Edgar's Cantina  
23 Home Run Porch; is that correct?

Page 27

1 A. Yes.

2 Q. Do you opine on the seating in those  
3 facilities in your report?

4 A. Opine about the seating?

5 Q. In those -- in your report.

6 A. I don't recall. I can look that up if  
7 you'd like.

8 Q. You are welcome to look at it. I am not  
9 trying to make this a trick or a memory game.

10 A. Okay. I mention the tables on the bottom  
11 of page twenty-three.

12 Q. Yes, you do. But I don't believe you are  
13 opining about their height or not.

14 A. Not in that case, no.

15 Q. Right. And you are not opining about the  
16 tables in Edgar's Cantina Homerun Porch in your  
17 report either, are you?

18 A. I don't believe so.

19 Q. So what would be the basis of your  
20 opinion that the Edgar's Cantina Homerun Porch  
21 exclusively features tall standing height tables and  
22 dining counters?

23 A. You know, I have to look back at my

Page 28

1 photographs of it. It -- those were the only ones  
2 that I saw set up while we were there, and as I  
3 said, they were the tables, I don't recall seeing  
4 chairs set up. There were chairs stacked in a  
5 number of places around the stadium, I don't recall  
6 what the status of them was in that location, but I  
7 didn't see anything lower, but there were a lot of  
8 tables down in that area. Now there were two -- two  
9 areas that -- there were to kind of stacked Edgar's  
10 places and there was a difference in the way that  
11 they were set up, but I don't recall seeing any low  
12 tables in that area.

13 Q. So the day that you were there, February  
14 5th, was not a day anything was happening at the  
15 stadium, correct?

16 A. They were doing construction on the  
17 seating --

18 Q. Let me make it clear, there were no  
19 events going on?

20 A. No, there was no event.

21 Q. And so Edgar's Cantina Homerun Porch was  
22 not set up for operation and patronage that day,  
23 correct?

James Terry

6/14/2019

Pages 29 to 32

<p style="text-align: right;">Page 29</p> <p>1 A. That is correct.</p> <p>2 Q. And so on the day you saw it, you saw it</p> <p>3 in an un-setup state with chairs stacked and tables,</p> <p>4 but it wasn't operational?</p> <p>5 A. I would say it was partially set up, but</p> <p>6 not operational.</p> <p>7 Q. Okay. And so it would not be then</p> <p>8 factually accurate to say that that Homerun Porch</p> <p>9 exclusively features tall standing height dining</p> <p>10 tables, right?</p> <p>11 MR. REYNOLDSON: Object to the form.</p> <p>12 A. Yeah, I wouldn't say that it is not</p> <p>13 factually accurate, because I have no evidence to</p> <p>14 contradict that. What I am saying is that it</p> <p>15 reflects what I saw when I was there.</p> <p>16 Q. Well, it would be then accurate to say,</p> <p>17 on the day I was there, Edgar's Cantina had only</p> <p>18 tall standing height tables, but it was not</p> <p>19 operational, would that be accurate?</p> <p>20 A. It would be.</p> <p>21 Q. Right. But to say it exclusively features</p> <p>22 tall standing height tables, there is no factual</p> <p>23 support for that?</p>	<p style="text-align: right;">Page 30</p> <p>1 MR. REYNOLDSON: Object to the form.</p> <p>2 A. Yeah, my understanding of the reports</p> <p>3 that I write, particularly when I tell you that this</p> <p>4 is the day that I visited, are, in my understanding,</p> <p>5 that means that is what I saw when I was there, this</p> <p>6 is what I have been able to tell from my other</p> <p>7 research, for example, Internet, et cetera, and from</p> <p>8 photographs that I have seen, from all the</p> <p>9 information that I have been able to collect, this</p> <p>10 is what I believe the case is. Now, immediately</p> <p>11 before my report is done or some time shortly before</p> <p>12 my report, those kind of things could be changed,</p> <p>13 things could be changed from what I see on the</p> <p>14 Internet, things can be changed, I may have missed</p> <p>15 something on the Internet, it is a big place, or</p> <p>16 something could have been changed after my report</p> <p>17 was done. My report reflects what I know about it,</p> <p>18 what I could see and what I have been able to tell</p> <p>19 from my research. I can't say that there is no other</p> <p>20 information that is different from my report, this</p> <p>21 is just what I know from what I have seen.</p> <p>22 Q. I understand and I appreciate that. I</p> <p>23 just want to be clear that when we are looking at</p>
<p style="text-align: right;">Page 31</p> <p>1 paragraph twenty-seven of your declaration, that is</p> <p>2 Exhibit 2, that paragraph is not qualified in any</p> <p>3 way; is that correct?</p> <p>4 A. It is not qualified in a way that you</p> <p>5 would like to have it qualified, and which I have</p> <p>6 agreed it could be qualified and still be accurate.</p> <p>7 Q. I am not actually debating with you about</p> <p>8 what you might have looked at or might have seen, I</p> <p>9 actually am only looking at what is said in this</p> <p>10 declaration. So if one reads paragraph twenty-seven,</p> <p>11 paragraph twenty-seven says, that the Edgar's</p> <p>12 Cantina Homerun Porch exclusively features tall</p> <p>13 standing height tables and dining counters. It does</p> <p>14 not say as seen on February 5, as set forth in my</p> <p>15 report, based on the research I have looked up on</p> <p>16 the Internet, it doesn't say any of those things,</p> <p>17 does it?</p> <p>18 A. I am sorry, maybe there is a legal</p> <p>19 distinction here, and I am not a lawyer.</p> <p>20 Q. I am just asking you to answer my</p> <p>21 question.</p> <p>22 A. Right. If you are asking -- if you are</p> <p>23 asking that if I could have chosen a more precise --</p>	<p style="text-align: right;">Page 32</p> <p>1 more precise language here that would reflect and</p> <p>2 limit it only to what I actually saw and what my</p> <p>3 research showed me and what the photographs I have</p> <p>4 seen show, then I could have changed this wording to</p> <p>5 say something else. I don't -- I mean, I am not</p> <p>6 arguing that, but I don't have any evidence to say</p> <p>7 that this is wrong. And I haven't, you know, I --</p> <p>8 yeah, like I said, I am not a registered architect</p> <p>9 in Washington, I am registered in a bunch of other</p> <p>10 states. I am writing as an architect, not as a</p> <p>11 lawyer. And if there is a legal distinction between</p> <p>12 what this says and what you are saying, I don't hear</p> <p>13 anything wrong with what you are saying, I am just</p> <p>14 saying, you know, this is what I chose to say here</p> <p>15 and say, yeah, for all the evidence that I have,</p> <p>16 this is what I can see. Now, I have photographs that</p> <p>17 I took while I was there that didn't give me any</p> <p>18 indication that there was anything different from</p> <p>19 what I have said in this. You know, I would be glad</p> <p>20 to entertain, you know, information that might</p> <p>21 change that opinion, but I haven't seen anything.</p> <p>22 Q. I am interested in paragraph twenty-</p> <p>23 three.</p>



James Terry

6/14/2019

Pages 33 to 36

Page 33	Page 34
<p>1 A. Okay.</p> <p>2 Q. This is now paragraph twenty-three within</p> <p>3 your declaration that is Exhibit 2?</p> <p>4 A. Yes.</p> <p>5 Q. It says that the Shortstop Beer Stand had</p> <p>6 no lower counter; do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Is that something that you observed?</p> <p>9 A. It was.</p> <p>10 Q. Okay. I was under the impression that the</p> <p>11 Shortstop Beer Stands were mobile concessions,</p> <p>12 portable concessions, is that rue?</p> <p>13 A. I don't know. There were lots of portable</p> <p>14 concessions that were set up, some of them had names</p> <p>15 on them, some of them did not have names on them. I</p> <p>16 was only allowed to spend six and a half hours in</p> <p>17 the facility, so I had to choose what I measured and</p> <p>18 what I didn't and I did not attempt to measure, you</p> <p>19 know, all of the low counters. The one that -- the</p> <p>20 one that I measured, this one, I believe was a --</p> <p>21 was actually a built in one. And looks like I did</p> <p>22 not put that photograph in my report. I would have</p> <p>23 to look and -- it might take me a minute to look and</p>	<p>1 see where I --</p> <p>2 Q. I don't recall there being --</p> <p>3 A. Right, I did not put that photograph in</p> <p>4 my report that I can find right now, and so -- but</p> <p>5 the ones I that I called out were actually -- now I</p> <p>6 call them fixed. If you wanted to move them, you</p> <p>7 can probably move them, but you probably have to</p> <p>8 have a crew and some heavy mechanical lifting</p> <p>9 equipment for the ones that I looked at. Like I</p> <p>10 said, I don't know if they were attached to the</p> <p>11 building or not, but they were very large where</p> <p>12 somebody was -- would stand behind the counter</p> <p>13 inside of a structure.</p> <p>14 Q. Let me direct you to page twenty-two of</p> <p>15 your report, which is Exhibit 1.</p> <p>16 A. Okay. All right.</p> <p>17 Q. This refers -- I believe this is number</p> <p>18 ten there at the bottom of the page, it is talking</p> <p>19 about concession stands; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. It does not mention the Shortstop Beer</p> <p>22 Stand, is there a reason you didn't mention it here?</p> <p>23 A. Now that is a question. I don't remember</p>
Page 35	Page 36
<p>1 why I didn't put it in here. And it is possible --</p> <p>2 it is possible that in writing my report I did not</p> <p>3 reflect all of the things that I saw and measured.</p> <p>4 In fact, I know it doesn't, and that the -- the two</p> <p>5 photographs that I was thinking about were the Hot</p> <p>6 Box and the Paquitos Taco Bar Sales.</p> <p>7 Q. Which are mentioned in section ten here</p> <p>8 on page twenty-two, correct?</p> <p>9 A. Yes.</p> <p>10 Q. But the Shortstop Beer, right, which you</p> <p>11 are opining about in your declaration isn't</p> <p>12 mentioned in your report, right?</p> <p>13 A. I don't see it in the report. So it is</p> <p>14 possible that the Shortstop Beer one was one of</p> <p>15 those that was -- that was a short one, that was a</p> <p>16 movable one and was not one of the built-ins and I</p> <p>17 put a tape measure on that one, I just don't recall</p> <p>18 at this point.</p> <p>19 Q. Okay. Your report says that the -- you</p> <p>20 did not measure any movable concession stands; is</p> <p>21 that correct?</p> <p>22 A. Okay. Defining measure, normally when I</p> <p>23 measure something, I put a tape measure on it, I</p>	<p>1 take a picture of it, I know exactly what that</p> <p>2 dimension is. There are a lot of times when I am</p> <p>3 walking around a facility where I look at an element</p> <p>4 and I can just tell you, with usually -- for the</p> <p>5 height of an element, within an inch or two or a few</p> <p>6 inches, what that height is. And in this particular</p> <p>7 case we did not attempt to document those kind of</p> <p>8 things. So I didn't measure, photograph and document</p> <p>9 in my report as to whether, you know, we looked at</p> <p>10 them and -- or whether we photographed them or not,</p> <p>11 I just don't recall that. We did see -- we did see</p> <p>12 movable elements around the facility and they were</p> <p>13 not all compliant.</p> <p>14 Q. Let me just ask you very simply, is the</p> <p>15 first sentence under section ten on page twenty-two</p> <p>16 of your report accurate?</p> <p>17 A. Again, I think from a wording standpoint,</p> <p>18 I could have been clearer.</p> <p>19 Q. I think it is a yes or no question. Is it</p> <p>20 accurate or not?</p> <p>21 A. Again, as I explained, how you measure</p> <p>22 something varies. So when I say -- when I say</p> <p>23 measure, I normally am saying, I am putting a tape</p>

James Terry

6/14/2019

Pages 37 to 40

<p style="text-align: right;">Page 37</p> <p>1 measure on it, I am photo documenting it and I am</p> <p>2 preparing it in that way.</p> <p>3 Q. Are you telling me that you measured some</p> <p>4 movable concessions but did not say so here?</p> <p>5 A. I noticed that there were accessible</p> <p>6 concessions that were not -- I mean that there were</p> <p>7 movable concessions that were not in the height</p> <p>8 ranges that they were supposed to be or don't appear</p> <p>9 to have all of the elements. Again, I didn't see all</p> <p>10 of those elements when I was onsite because</p> <p>11 sometimes they are partnered together and so there</p> <p>12 may have been a lower section that was with it when</p> <p>13 I saw it and said, eh, that is not compliant, and</p> <p>14 I just don't recall on that one. I would have to go</p> <p>15 back through and look at my photographs to see what</p> <p>16 the -- you know, what the -- what that comment was</p> <p>17 based on.</p> <p>18 Q. Fair to say that you don't actually have</p> <p>19 the knowledge as you sit here today about whether</p> <p>20 the Shortstop Beer Stand is compliant?</p> <p>21 A. I don't have definitive knowledge of the</p> <p>22 dimension on that particular type as we sit here</p> <p>23 today. Again, it would be in my records, but I don't</p>	<p style="text-align: right;">Page 38</p> <p>1 have that with me.</p> <p>2 Q. You just don't know?</p> <p>3 A. You could say that.</p> <p>4 Q. I would like to turn your attention to</p> <p>5 page nine of your report, please.</p> <p>6 A. Okay. Got it.</p> <p>7 Q. Within section five, the number one, is</p> <p>8 your discussion of lines of sight and I believe it</p> <p>9 continues onto page twelve; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And as I understand it, your</p> <p>12 opinion is that T Mobile Park does not have</p> <p>13 compliant lines of sight under 1991 standards or</p> <p>14 2010 standards; is that correct?</p> <p>15 A. That is an over generalization.</p> <p>16 Q. Okay. Why don't you rephrase it</p> <p>17 accurately for me?</p> <p>18 A. Of the locations that I studied, only one</p> <p>19 of those had compliant lines of sight over standing</p> <p>20 spectators.</p> <p>21 Q. So I believe you looked at ten locations;</p> <p>22 is that correct?</p> <p>23 A. There were ten of them that I studied,</p>
<p style="text-align: right;">Page 39</p> <p>1 yes.</p> <p>2 Q. You looked at and studied ten locations</p> <p>3 and your opinion is that nine of those do not have</p> <p>4 compliant sightlines and one does?</p> <p>5 A. That is correct.</p> <p>6 Q. Okay. So if we look at the last paragraph</p> <p>7 on -- in section one on page twelve.</p> <p>8 A. Yes.</p> <p>9 Q. Are you there?</p> <p>10 A. Yes.</p> <p>11 Q. It is the paragraph that begins, it is</p> <p>12 clear, right?</p> <p>13 A. Yes.</p> <p>14 Q. That is an over generalization, isn't it?</p> <p>15 A. No.</p> <p>16 MR. REYNOLDSON: Object to the form.</p> <p>17 A. I don't believe it is.</p> <p>18 Q. Well, it doesn't say based upon the ten</p> <p>19 locations I studied, does it?</p> <p>20 A. Oh, okay. Again, as I mentioned, I was</p> <p>21 given six and a half hours to study this stadium.</p> <p>22 And so everything that I have done has been</p> <p>23 qualified by explaining exactly what I did and</p>	<p style="text-align: right;">Page 40</p> <p>1 recognizing the fact that I did not measure</p> <p>2 everything. I didn't measure two locations, I</p> <p>3 measured ten. And so my opinion is based on what I</p> <p>4 was allowed to find out by looking at this, now, by</p> <p>5 looking at it, by studying everything I could study</p> <p>6 in the six and a half hours I was allowed to be</p> <p>7 there. And so if you are asking if I should have</p> <p>8 made this thirty-two page report 200 pages in order</p> <p>9 to add all the qualifications in every sentence and</p> <p>10 paragraph, that would repeat that kind of</p> <p>11 limitation, I didn't do that. I didn't choose to do</p> <p>12 that. I stated exactly what I was basing my opinions</p> <p>13 on. I stated the limitations on it. And</p> <p>14 everything -- all of the opinions that I have put in</p> <p>15 here are based on those limited things that I was</p> <p>16 allowed to see. And so you can look at lots of</p> <p>17 sentences in the report and take the same kind of</p> <p>18 "well, you don't have enough information to make</p> <p>19 that judgment," you can take that to as far as you</p> <p>20 want to take it. But I think it is -- it is not</p> <p>21 going to be supported by the process that I</p> <p>22 followed, by the information that I listed, the</p> <p>23 details that I gave, and what we found, and then by</p>



James Terry

6/14/2019

Pages 41 to 44

<p style="text-align: right;">Page 41</p> <p>1 the evidence on the ground. I tried to get a very</p> <p>2 representative sample of the spaces where most</p> <p>3 wheelchair users would want to go and I based this</p> <p>4 on what I saw from those. Now, I have done dozens</p> <p>5 and dozens of stadium facilities and so when I --</p> <p>6 when I chose these spots to take these, I did that</p> <p>7 in a way that would be what I felt like was</p> <p>8 representative, based on my experience as a stadium</p> <p>9 accessibility expert.</p> <p>10 Q. Mr. Terry, I was not asking you questions</p> <p>11 about your statistical sampling. What I was</p> <p>12 interested in and that I started this line of</p> <p>13 questioning was by asking whether or not your</p> <p>14 opinion is that T Mobile Park does not have proper</p> <p>15 lines of sight for accessible seating under either</p> <p>16 the 1991 or 2010 standard. And your response was</p> <p>17 telling me that was an over generalization. You then</p> <p>18 qualified it and said that if you were to rephrase</p> <p>19 it you would say, based upon the ten locations I</p> <p>20 looked at, nine of them, I believe, were not</p> <p>21 compliant. Then I asked you why you didn't have the</p> <p>22 same language in your report. That is all. So you're</p> <p>23 familiar with section 4.33.391 standards, correct?</p>	<p style="text-align: right;">Page 42</p> <p>1 A. Yes.</p> <p>2 Q. And that requires that wheelchair areas</p> <p>3 shall be an integral part of any fixed seating plan</p> <p>4 and shall be provided so as to provide people with</p> <p>5 physical disabilities a choice of admission prices</p> <p>6 and lines of sight comparable to those for members</p> <p>7 of the general public, end quote; right?</p> <p>8 A. I didn't -- I don't have a copy of the</p> <p>9 standards in front of me to know if that is the</p> <p>10 exact quote, but that is generally what it says.</p> <p>11 Q. Okay. And the seating for -- accessible</p> <p>12 seating also means to adjoin an accessible route as</p> <p>13 a means for egress in case of emergency; is that</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do the '91 standards in section 4.33.3</p> <p>17 provide a requirement of sightline over standing</p> <p>18 spectators?</p> <p>19 A. Yes.</p> <p>20 Q. Does it say that anywhere in the section</p> <p>21 4.33.3?</p> <p>22 A. Yes.</p> <p>23 Q. Where does it say that?</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Lines of sight comparable to those for</p> <p>2 members of the general public.</p> <p>3 Q. Fair enough. I understand, but the phrase</p> <p>4 or the words sightlines over standing spectators are</p> <p>5 not there, are they?</p> <p>6 A. The words are not there.</p> <p>7 Q. Okay. Is there any detail or specific</p> <p>8 guidance in 4.33.3 as to what comprises compliant</p> <p>9 lines of sight?</p> <p>10 A. It is a performance standard and so it</p> <p>11 requires the designers and the contractors and the</p> <p>12 owners to achieve the level of performance specified</p> <p>13 so it does not do prescriptive requirements. It is</p> <p>14 not a prescriptive section of the standard.</p> <p>15 Q. My question is is there any details or</p> <p>16 guidance as to what comprises compliant lines of</p> <p>17 sight in section 4.33.3?</p> <p>18 A. Details are prescriptive standards. This</p> <p>19 is not a prescriptive standard.</p> <p>20 Q. So the answer is no?</p> <p>21 A. It is not a prescriptive standard, so it</p> <p>22 does not have the details that a prescriptive</p> <p>23 standard would have.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Okay. Are you familiar with the Technical</p> <p>2 Assistance Manual that came out in November 1993</p> <p>3 regarding Title 3?</p> <p>4 A. Was it '93?</p> <p>5 Q. There is a Technical Assistance Manual in</p> <p>6 November 1993, are you familiar with it?</p> <p>7 A. I know that one came out then and it was</p> <p>8 amended maybe the next year. It was added to.</p> <p>9 Q. That is correct. There was a '94</p> <p>10 supplement.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Are you familiar with the Technical</p> <p>13 Assistance Manual that came out in November 1993?</p> <p>14 A. Yes.</p> <p>15 Q. Does it make any mention of sightlines</p> <p>16 over standing spectators?</p> <p>17 A. I don't recall. If I have a copy of it, I</p> <p>18 can look at it. I know that your expert testified</p> <p>19 that it did not, but I haven't gone back to look at</p> <p>20 it since then.</p> <p>21 Q. Okay. You just don't recall. That is</p> <p>22 fair. Do you know if the Technical Assistance Manual</p> <p>23 for 1993 provided any detail or guidance as to what</p>

James Terry

6/14/2019

Pages 45 to 48

Page 45	Page 46
<p>1 comprises compliant lines of sight?</p> <p>2 A. I haven't gone back to look at it, so I</p> <p>3 don't recall.</p> <p>4 Q. There was a Technical Assistance Manual</p> <p>5 supplement in November 1994; do you recall that?</p> <p>6 A. I do.</p> <p>7 Q. Did that make any mention of lines of</p> <p>8 sight over spectators in the stands?</p> <p>9 A. I have not gone back to look at it, so I</p> <p>10 don't recall, but I know your expert testified that</p> <p>11 it did, in his expert report.</p> <p>12 Q. You just don't know it?</p> <p>13 A. I didn't go back to look at it.</p> <p>14 Q. Fair enough. You don't know as you sit</p> <p>15 here today?</p> <p>16 A. As I sit here today, I am not going to</p> <p>17 quote from a document that I haven't reviewed enough</p> <p>18 to know what it said.</p> <p>19 Q. Fair enough. That is all I am asking.</p> <p>20 A. Okay.</p> <p>21 Q. Do you know if the supplement provided</p> <p>22 any anthropometric data regarding how one goes about</p> <p>23 measuring standing spectator eyesight?</p>	<p>1 A. I don't believe it did.</p> <p>2 Q. Are you familiar with the Accessible</p> <p>3 Stadium Document DOJ issued in 1996?</p> <p>4 A. Yes.</p> <p>5 Q. Are you familiar with what it says about</p> <p>6 lines of sight?</p> <p>7 A. Yes, generally.</p> <p>8 Q. It says that in stadiums where spectators</p> <p>9 can be expected to stand during the show or event,</p> <p>10 paren, for example, football, baseball, basketball</p> <p>11 games or rock concerts, end paren, all or</p> <p>12 substantially all of the wheelchair seating</p> <p>13 locations must provide a line of sight over standing</p> <p>14 spectators; right?</p> <p>15 A. I don't know if that is a quote or not,</p> <p>16 but that is the idea, yes.</p> <p>17 Q. Okay. It talks about a, quote, comparable</p> <p>18 line of sight, end quote, being one that, quote,</p> <p>19 allows a person using a wheelchair to see the</p> <p>20 playing surface between the heads and over the</p> <p>21 shoulders of the persons standing in the row</p> <p>22 immediately in front, and over the heads of the</p> <p>23 persons standing two rows in front, end quote. Is</p>
Page 47	Page 48
<p>1 that consistent with your understanding of the</p> <p>2 Accessible Stadium document?</p> <p>3 A. Yes.</p> <p>4 Q. Did it provide any anthropometric data in</p> <p>5 terms of figuring out whether or not there were</p> <p>6 lines of sight that were compliant with that</p> <p>7 direction?</p> <p>8 A. It did not.</p> <p>9 Q. Is that a prescriptive document?</p> <p>10 A. It is -- it is not a prescriptive</p> <p>11 standard. It is a performance -- it is a performance</p> <p>12 standard with more information in it than the</p> <p>13 original 1991 paragraph 4.33.3. It is still a</p> <p>14 performance standard.</p> <p>15 Q. And more than the supplement in 1994?</p> <p>16 A. Okay.</p> <p>17 Q. Do you disagree?</p> <p>18 A. I don't disagree.</p> <p>19 Q. Okay. Is there any mention in the</p> <p>20 Accessible Stadium document of what part of the</p> <p>21 playing surface one has to have a line of sight to?</p> <p>22 A. It is comparable lines of sight, so it</p> <p>23 would be whatever the people in comparable seats</p>	<p>1 would have.</p> <p>2 Q. Has the DOJ ever indicated anthropometric</p> <p>3 data in regulations with respect to sight line?</p> <p>4 A. In a regulation have they specified the</p> <p>5 actual anthropometric data?</p> <p>6 Q. Yep.</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. If you were to look for guidance from the</p> <p>9 DOJ as to what anthropometric data one might use,</p> <p>10 what would you look to?</p> <p>11 A. I think it would depend on the</p> <p>12 circumstance, so because it was a -- it would depend</p> <p>13 on when that was given to me and it would depend on</p> <p>14 what the circumstances were. So if I were being</p> <p>15 asked by a stadium designer what would you do versus</p> <p>16 being asked by a plaintiff or by the Department of</p> <p>17 Justice, what is the absolute minimum that they</p> <p>18 should have done, then I would give both of those</p> <p>19 answers, and in fact do that now. Now meaning in my</p> <p>20 current practice I will tell people that</p> <p>21 information.</p> <p>22 Q. Fair enough. And I recognize there may be</p> <p>23 a range of guidance you might give. If one were to</p>

James Terry

6/14/2019

Pages 49 to 52

Page 49

1 look to the DOJ for specific guidance with respect  
2 to anthropometric data to use in measuring  
3 sightlines, what would you look to?

4 A. I would look at the settlement agreements  
5 that they have reached with stadium designers, with  
6 stadium owners and say what kind of numbers have  
7 they agreed to in their settlement agreements,  
8 consent decrees, whatever type of action they have  
9 had, what have you agreed to as the minimum that you  
10 would be willing to accept to in order to drop the  
11 investigation, drop the suit, settle the suit or  
12 whatever. And those numbers are the Ellerbe Becket  
13 numbers that were the best available at the time  
14 that these -- that these cases were going and that  
15 most of these facilities were being designed. That  
16 was the best anthropometric data that anybody had in  
17 the design profession.

18 Q. Are you talking about the consent order  
19 in the Ellerbe Becket case that was issued in late  
20 1998?

21 A. Yes, and other cases that were before  
22 that.

23 Q. Okay. What are the other cases before

Page 50

1 that that you are referring to?

2 A. Well, certainly the Olympic facilities  
3 that else Becket designed in Atlanta that were in  
4 operation in mid '96, so they were designed, you  
5 know, years before that, year to two years before  
6 that, and they were using them in the same -- I am  
7 sorry.

8 Q. Did the anthropometric data, whatever it  
9 was, if it was in the settlement regarding the  
10 Olympic stadium in Atlanta, is that public?

11 A. You know, I haven't seen that in the  
12 Department of Justice's web site. I can tell you  
13 that it is in my files from as early as '95 that  
14 Justice was telling people that. We worked as their  
15 expert on the aquatic center for the Olympics and  
16 those were the numbers that we were using then. So I  
17 have records going back to then and Ellerbe Becket  
18 was getting that.

19 Q. And --

20 A. And before that. Those same numbers have  
21 been floating around for a long time.

22 Q. Is there any publicly available  
23 information from the DOJ as to anthropometric data

Page 51

1 to use prior to Ellerbe Becket?

2 A. I don't know how public that information  
3 was. I know that they were telling architects that  
4 as early as '93, but I don't know -- I don't know if  
5 they published any of those things for general  
6 publication. You remember that was before the  
7 Internet, so it wasn't like you could put it on the  
8 Internet and everybody could find it really easily,  
9 you had to do searches for it. I know it was an  
10 attachment to the Olympic settlement agreement in  
11 '96. I don't know --

12 Q. You are aware the exhibits to the  
13 settlement agreement in '96 were sealed, right?

14 A. I am not.

15 Q. That is not publicly available, is it?

16 A. I don't know. That is a legal question.  
17 I didn't know they were sealed. You are the first  
18 person to tell me that.

19 Q. You didn't know that?

20 A. I didn't know that. I was involved in the  
21 process then and -- but again, at the time we  
22 weren't -- we were under non disclosure agreements  
23 not to discuss those cases because they were active

Page 52

1 and there were people -- you know, millions of  
2 people are getting ready to show up and so they  
3 didn't want us disclosing what we knew about the  
4 whole thing.

5 Q. Okay. So if you are advising someone  
6 designing a stadium in 1996, '97, what are the DOJ  
7 regs that you would say apply to the line of sight  
8 with respect to standing spectators?

9 A. I would be advising them that the  
10 standards are a performance standard, that you have  
11 to achieve comparability with members of the public,  
12 you need to -- members of the general public, which  
13 means people who can stand, you need to achieve  
14 comparability, you need to do the best efforts that  
15 you can do to meet that, so whatever information is  
16 available in terms of anthropometrics, you need to  
17 look for that and use it. And at the time, the best  
18 information was human scale by Dreyfuss and  
19 architectural graphic standards was available from,  
20 you know, the 70's, mid 70's on, with those kind of  
21 dimensions in it. And so absent specific numbers  
22 from the Department of Justice for what was clearly  
23 a performance standard, you would use your best

James Terry

6/14/2019

Pages 53 to 56

Page 53	Page 54
<p>1 professional knowledge, your best professional</p> <p>2 information sources to design that.</p> <p>3 Q. Is there any statutory guideline or DOJ</p> <p>4 promulgated regulation that specifies what line of</p> <p>5 sight over standing spectator is required in 1996 or</p> <p>6 1997?</p> <p>7 A. Yes.</p> <p>8 Q. What is it?</p> <p>9 A. Comparability.</p> <p>10 Q. Okay. So it is comparability and is there</p> <p>11 anything that you can point to from the DOJ that</p> <p>12 tells you what comparability means in this context</p> <p>13 in 1996 or 1997?</p> <p>14 A. Technical Assistance Documents that they</p> <p>15 put together.</p> <p>16 Q. Are you referring to something other than</p> <p>17 the 1993 TAM and the 1994 TAM supplement?</p> <p>18 A. You know, I would have to go back through</p> <p>19 and look at my notes. There were -- there was</p> <p>20 information in -- there was information in letters</p> <p>21 that they wrote in other cases that they were</p> <p>22 investigating, letters to architects, there were --</p> <p>23 Q. Mr. Terry, I asked you -- I have asked</p>	<p>1 you about statutory guidelines or DOJ promulgated</p> <p>2 regulations, that is what I am asking about.</p> <p>3 A. Yeah, I am sorry, as a lawyer you may not</p> <p>4 understand performance codes, that is something that</p> <p>5 architects work with all the time. There are lots</p> <p>6 and lots of performance codes. In a performance code</p> <p>7 you are not given specific details about how to</p> <p>8 accomplish, in your building, the requirement of</p> <p>9 that code. And so what I am telling you is, you are</p> <p>10 trying to turn a performance standard into a</p> <p>11 prescriptive standard, and you can't do that unless</p> <p>12 you rewrite it as a prescriptive standard, which</p> <p>13 they did. The Access Board wrote it as a</p> <p>14 prescriptive standard in their 2004 guidelines and</p> <p>15 the Department of Justice adopted it with</p> <p>16 modifications in their 2010 standard, but prior to</p> <p>17 that it was a performance standard, and you just</p> <p>18 can't twist it to make it anything else.</p> <p>19 Q. But I am actually -- I understand your</p> <p>20 distinction and I appreciate that.</p> <p>21 A. Okay.</p> <p>22 Q. I am not trying -- I am actually just</p> <p>23 asking a question.</p>
Page 55	Page 56
<p>1 A. Okay.</p> <p>2 Q. What you are telling me is that the 1991</p> <p>3 standard is a performance standard and the 2010</p> <p>4 standard is prescriptive; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What is the specific anthropometric</p> <p>7 data that the 2010 standard requires?</p> <p>8 A. The -- it requires the same kind of</p> <p>9 information, it does not specify the anthropometric</p> <p>10 data. At the time that standard was written, at the</p> <p>11 time the guidelines were written by the Access</p> <p>12 Board, the best studies were research that were, at</p> <p>13 the time, still underway. And so they didn't have</p> <p>14 dimensions for that when they wrote the 2004 ADA</p> <p>15 guidelines. When Justice wrote it as 2010</p> <p>16 standards, it still hadn't come out. It wasn't</p> <p>17 released until the end of 2010 and so they did not</p> <p>18 choose to give you actual dimensions, but it is --</p> <p>19 that is not unusual in the -- in the ADA standards</p> <p>20 or in anything else. The architect still has an</p> <p>21 obligation to meet broader requirements than purely</p> <p>22 all the dimensions that are listed. Where</p> <p>23 dimensions are listed, clearly you have to meet</p>	<p>1 those, but where they are not listed, you have to</p> <p>2 use your professional judgment. And based on</p> <p>3 reasonable assumptions about who your users are and</p> <p>4 the buildings intended uses and those kind of</p> <p>5 things, and they did not -- they have still not come</p> <p>6 out with definitive spectator anthropometrics to use</p> <p>7 in the standard. It is a prescriptive standard, a</p> <p>8 more prescriptive standard. But, again, if you</p> <p>9 tried to detail every single piece out of the ADA</p> <p>10 standard or even a building code, the -- they would</p> <p>11 balloon tremendously.</p> <p>12 Q. Would you agree that the Ellerbe Becket</p> <p>13 consent order is prescriptive?</p> <p>14 A. In more ways than the -- than the '91</p> <p>15 standards are, it is more prescriptive. It defines</p> <p>16 the performance objective that they will accomplish</p> <p>17 in their designs, it defines those with greater</p> <p>18 specificity than the performance objectives that</p> <p>19 were in the '91 standard, but it is not as</p> <p>20 prescriptive as, for example, the 2010 standards</p> <p>21 are.</p> <p>22 Q. Well, so is it fair to say that you see</p> <p>23 performance standards and prescriptive standards as</p>

James Terry

6/14/2019

Pages 57 to 60

<p style="text-align: right;">Page 57</p> <p>1 being a continuum?</p> <p>2 A. They are.</p> <p>3 Q. Okay. And you would say the consent order</p> <p>4 is prescriptive or performance or both?</p> <p>5 A. That is a legal question.</p> <p>6 Q. No, I --</p> <p>7 A. As an architect it looks to me like it is</p> <p>8 still a performance standard, because it says, you</p> <p>9 shall provide all or substantially all, but it gives</p> <p>10 you some more prescriptive guidance on what</p> <p>11 dimensions to use for wheelchair users.</p> <p>12 Q. So I think you testified a few minutes</p> <p>13 ago that other more developed anthropometric data</p> <p>14 was available in late 2010; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Is there some reason why that data has</p> <p>17 not been incorporated in the 2010 standards or any</p> <p>18 update since in the nine years?</p> <p>19 A. The regulatory process in Washington</p> <p>20 moves at an incredibly slow pace. And has just</p> <p>21 stopped, essentially, in the last few years. So,</p> <p>22 yeah, I don't expect all of those results to be</p> <p>23 imbedded in the ADA standards any time soon.</p>	<p style="text-align: right;">Page 58</p> <p>1 Q. Fair enough. I understand you to say it</p> <p>2 in your view is sort of bureaucratic slowness?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Let's do this, I am not trying to</p> <p>5 make this a marathon.</p> <p>6 A. Okay.</p> <p>7 Q. So why don't we take a three minute break</p> <p>8 so that everybody can use the restroom or get a</p> <p>9 glass of water or whatever and then we will come</p> <p>10 back and start up; is that fair?</p> <p>11 A. Sure.</p> <p>12 (Short break.)</p> <p>13 Q. I want to go back and make sure I am</p> <p>14 clear about the applicable guidance and the DOJ that</p> <p>15 is in the form of a statutory requirement or a</p> <p>16 regulation that was available in '96/'97. What we</p> <p>17 have, I think, is the '91 standard, the TAM of '93,</p> <p>18 the TAM supplement of '94, and then the Accessible</p> <p>19 Stadium documents; is that correct?</p> <p>20 A. You are asking me a legal question,</p> <p>21 because you have imbedded the question of</p> <p>22 statutorily something or other.</p> <p>23 Q. No, it is not a legal question. It is not</p>
<p style="text-align: right;">Page 59</p> <p>1 a legal question, Mr. Terry. I am asking about</p> <p>2 whether you are aware of some sort of statutory</p> <p>3 requirement or regulation from the DOJ, something</p> <p>4 official from the government, right, that you can</p> <p>5 rely upon that is public, that addresses the issue</p> <p>6 of sightlines and standing spectators in any way as</p> <p>7 of '96/'97 and I identified four things. If there is</p> <p>8 something else out there that you think that one</p> <p>9 would have been looking at, there was a statutory</p> <p>10 requirement or regulation, then please identify it.</p> <p>11 I want to be complete.</p> <p>12 A. All right. Define -- I am not sure --</p> <p>13 when you qualify it by saying statutorily or</p> <p>14 regulation, when you use that, you are limiting what</p> <p>15 you are willing to accept of documents from the</p> <p>16 Department of Justice. And I don't understand your</p> <p>17 limitation in that, because I don't understand -- as</p> <p>18 a non lawyer, I don't understand, if I get a letter</p> <p>19 from the Department of Justice that says here is</p> <p>20 what I want you to do, knowing that the Department</p> <p>21 of Justice is the entity that wrote that regulation,</p> <p>22 that adopted it, and that enforces it and interprets</p> <p>23 it, their interpretation is supposed to be, as an</p>	<p style="text-align: right;">Page 60</p> <p>1 architect, I know, it is supposed to be entitled to</p> <p>2 deference. So if I get a letter from the Department</p> <p>3 of Justice that says, here is what you are supposed</p> <p>4 to do, I am going to treat that like, you know,</p> <p>5 something else. Now, the Technical Assistance Manual</p> <p>6 doesn't go through the same process that the</p> <p>7 regulations themselves go through, but they go</p> <p>8 through a little more detailed process than a letter</p> <p>9 from the Department of Justice. And so I don't know</p> <p>10 where to draw the line between what you want me to</p> <p>11 list in the list you are asking for and the letters</p> <p>12 from the Department of Justice that were going out</p> <p>13 in 1993 to architects and the Department of Justice</p> <p>14 discussions with people about what their</p> <p>15 expectations were, and '93, '94, '95 and the time</p> <p>16 these things came out. So I am not sure how to draw</p> <p>17 the line there when you are saying you want me to</p> <p>18 list these documents for you, I don't have a</p> <p>19 complete list of them. There are lots of them.</p> <p>20 Q. What I am looking for is I am looking for</p> <p>21 things that would have been available to the general</p> <p>22 public.</p> <p>23 A. Well, the letters that the Department of</p>

James Terry

6/14/2019

Pages 61 to 64

<p style="text-align: right;">Page 61</p> <p>1 Justice wrote --</p> <p>2 Q. Let me finish, please.</p> <p>3 A. Yes, okay.</p> <p>4 Q. You referred, for example, to the Olympic</p> <p>5 stadium settlement, right? That settlement document</p> <p>6 is public but all the exhibits are sealed, that is</p> <p>7 an example.</p> <p>8 A. Okay.</p> <p>9 Q. I don't believe then that you can say</p> <p>10 whatever is in those Exhibits is something that the</p> <p>11 public was aware of.</p> <p>12 A. Oh, wait a minute.</p> <p>13 Q. Similarly, if I sent a letter to you,</p> <p>14 Evan Terry Associates, LLC, Architect, that is</p> <p>15 certainly communication provided to you, but it is</p> <p>16 not necessarily communication that the general</p> <p>17 public is aware of or that a practitioner in North</p> <p>18 Dakota knows, okay? So what I am looking for is</p> <p>19 your understanding of what kind of official</p> <p>20 publication, guidance, regulation, the DOJ was</p> <p>21 publishing in this time frame that one could look</p> <p>22 to. And I have identified the 1991 standard section</p> <p>23 4.33.3, and I have identified the two Technical</p>	<p style="text-align: right;">Page 62</p> <p>1 Assistance Manuals, and I have identified the</p> <p>2 Accessible Stadium document. I am happy to</p> <p>3 entertain and would like to know if there is</p> <p>4 something else out there that is official, published</p> <p>5 by the DOJ that was available to the general public</p> <p>6 at the time.</p> <p>7 A. Yes, there were.</p> <p>8 Q. What?</p> <p>9 A. For example, the letters that the</p> <p>10 Department of Justice was writing, the Technical</p> <p>11 Assistance letters that they were writing, many of</p> <p>12 them to congress people on behalf of their</p> <p>13 constituents, those letters were publicly available.</p> <p>14 We got hundreds of those and did summaries from</p> <p>15 those in our -- in one of the supplements to our ADA</p> <p>16 facilities compliance workbook from that time frame.</p> <p>17 Those were publicly available. You could ask them</p> <p>18 and they would send them to you. There were -- I am</p> <p>19 sorry.</p> <p>20 Q. I said okay.</p> <p>21 A. There were other documents that Justice</p> <p>22 was putting out that would have been publicly</p> <p>23 available. There were newspaper articles that were</p>
<p style="text-align: right;">Page 63</p> <p>1 coming out about the Department of Justice saying</p> <p>2 particular things. And so that was -- there were</p> <p>3 lots of other things coming out then, prior to '96.</p> <p>4 Like I said, I could trace back '93, '94, '95, '96,</p> <p>5 '97 with those kinds of expectations in those</p> <p>6 documents.</p> <p>7 Q. This issue has been litigated, right?</p> <p>8 A. It has.</p> <p>9 Q. Did you testify in the Independent Living</p> <p>10 Resources case?</p> <p>11 A. Is that the one that was the Rose Garden</p> <p>12 Arena?</p> <p>13 Q. Yes, it is.</p> <p>14 A. Yes.</p> <p>15 Q. Did you testify about this issue?</p> <p>16 A. I am sorry.</p> <p>17 Q. Did you testify about this issue?</p> <p>18 A. In deposition, yes, it didn't go to</p> <p>19 trial.</p> <p>20 Q. I understand. What was your opinion in</p> <p>21 that case with respect to sightlines over standing</p> <p>22 spectators?</p> <p>23 A. Same one.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Same as today?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And the Court issued a ruling in</p> <p>4 that case, didn't it?</p> <p>5 A. Yes.</p> <p>6 Q. Did they agree with you?</p> <p>7 A. I am sorry?</p> <p>8 Q. Did the Court agree with you?</p> <p>9 A. Partially.</p> <p>10 Q. Well, actually the Court said this, Court</p> <p>11 said section 4.33.3 does not presently require that</p> <p>12 wheelchair users be given lines of sight over</p> <p>13 standing spectators, that is what the Court said?</p> <p>14 A. In that part, yes.</p> <p>15 Q. Okay. And they disagreed with you about</p> <p>16 the requirement for there to be sightlines over</p> <p>17 standing spectators, right?</p> <p>18 A. In that part, yes.</p> <p>19 Q. What do you mean in that part? That was</p> <p>20 the ruling in the case.</p> <p>21 A. Didn't the Judge actually write a much</p> <p>22 longer opinion than that or a ruling that was much</p> <p>23 longer than that? Weren't there other things that</p>



James Terry

6/14/2019

Pages 65 to 68

<p style="text-align: right;">Page 65</p> <p>1 the Judge agreed with us on?</p> <p>2 Q. The Judge may have agreed with you on</p> <p>3 things, I am asking about the sightline over</p> <p>4 standing spectators issues.</p> <p>5 A. Yes, that is was the Judge's opinion in</p> <p>6 that case. And so in that Circuit for that period</p> <p>7 of time, you know, my understanding is that is the</p> <p>8 way it was interpreted until it was relitigated.</p> <p>9 Q. Got it. So you were in the Ninth Circuit</p> <p>10 in 1997, that is what you would have understood?</p> <p>11 A. I would have understood that that Judge</p> <p>12 said that.</p> <p>13 Q. Right. That a Court had addressed the</p> <p>14 issue that you had testified and the Court had ruled</p> <p>15 differently than what you testified, right?</p> <p>16 A. Yes.</p> <p>17 Q. Was there any case in the Ninth Circuit</p> <p>18 if that time frame that went a different</p> <p>19 direction --</p> <p>20 A. I don't know, that is --</p> <p>21 Q. -- on this issue?</p> <p>22 A. That is a legal question and I don't</p> <p>23 know.</p>	<p style="text-align: right;">Page 66</p> <p>1 Q. It is a factual question.</p> <p>2 A. It is, but I would have to have access to</p> <p>3 Lexus Nexus or some other legal resource in order to</p> <p>4 be able to look at it, and then I would have to be</p> <p>5 able to study the facts of the case and render a</p> <p>6 legal opinion and I can't do that.</p> <p>7 Q. But you just don't know, though -- in</p> <p>8 your words, for example, you don't know if there was</p> <p>9 any other case on that issue at that time in the</p> <p>10 Ninth Circuit?</p> <p>11 A. I do not know of anything else that would</p> <p>12 contradict that.</p> <p>13 Q. Okay. So if for today's deposition we</p> <p>14 assume that you are correct and that there is a</p> <p>15 non compliance with respect to the sightlines over</p> <p>16 standing spectators, what is the remedy?</p> <p>17 A. You know, I didn't have enough time to</p> <p>18 study remedies while I was there. There are -- I</p> <p>19 teach seminars on different ways to remedy sightline</p> <p>20 over standing spectators in existing facilities or</p> <p>21 facilities that are already built under the 2010</p> <p>22 definition of existing, and there are lots and lots</p> <p>23 of solutions that I have seen for this kind of</p>
<p style="text-align: right;">Page 67</p> <p>1 problem. I haven't studied them specifically at the</p> <p>2 Mariners stadium, but I have seen them in other</p> <p>3 large stadiums, and it is my opinion that there are</p> <p>4 probably solutions there that will work to fix them.</p> <p>5 I just haven't studied them enough to go on record,</p> <p>6 you know, to a Court that tells you, oh, this will</p> <p>7 work, because I haven't studied enough to do that. I</p> <p>8 like to be very careful with what I claim about</p> <p>9 something.</p> <p>10 Q. I appreciate that. Is it fair to say then</p> <p>11 that you do not have an opinion as to what would be</p> <p>12 a remedy for T Mobile Park if you are correct?</p> <p>13 A. I have an opinion that there are options</p> <p>14 that would have a very high likelihood of working,</p> <p>15 but I can't tell you which ones of those would work,</p> <p>16 and specifically any of the specific locations that</p> <p>17 are there.</p> <p>18 Q. Right. So you have a conceptual idea</p> <p>19 about what remedies might be, but you have no</p> <p>20 opinion as to the remedy here?</p> <p>21 A. Well, it wouldn't be remedy, there would</p> <p>22 be lots of different remedies depending on which</p> <p>23 section of the pit you are trying to correct.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Fair enough. You don't have an opinion as</p> <p>2 to the specific remedies here?</p> <p>3 MR. REYNOLDSON: Object to the form.</p> <p>4 A. I have opinions about specific remedies,</p> <p>5 I have not compared those specific opinions and</p> <p>6 those specific solution types to this facility on a</p> <p>7 dimensional basis to know which ones of them will</p> <p>8 work in which locations, and which ones won't,</p> <p>9 because some of them you just have to compare them</p> <p>10 to the specific conditions. And there may be</p> <p>11 something that is not one of my typical ones that</p> <p>12 would work even better than the -- in that location.</p> <p>13 And I just haven't had a chance to study that.</p> <p>14 Q. I understand. And all I am trying to</p> <p>15 make clear is that you have ideas, certainly things</p> <p>16 that might work, different ideas, but you do not</p> <p>17 have an opinion about any specific remedy here in</p> <p>18 this ballpark today?</p> <p>19 A. I do not have specific design solutions</p> <p>20 to solve the problems in this ballpark. I have</p> <p>21 generic solution that I would have to analyze in</p> <p>22 relation to the specifics of each section that</p> <p>23 needed to be fixed.</p>

James Terry

6/14/2019

Pages 69 to 72

<p style="text-align: right;">Page 69</p> <p>1 Q. Could you identify for me, say, five of</p> <p>2 your generic solutions?</p> <p>3 A. Sure. Raised platforms. When you have</p> <p>4 got wheelchair seating in the back of a seating</p> <p>5 bank, like you do in the one hundred section around</p> <p>6 T Mobile, you can add raised platforms like you did</p> <p>7 in section 227. Those kind of -- you have a lot more</p> <p>8 room in the one hundreds than you did in the two</p> <p>9 hundreds. Those were kind of shoe horned into small</p> <p>10 spaces. But you can add raised platforms. That</p> <p>11 will give the wheelchair users just that extra</p> <p>12 height that you need to be able to see, and in this</p> <p>13 case particularly the infield, to be able to see the</p> <p>14 same things that other people can see. That is one</p> <p>15 solution type. Another one you can add wheelchair</p> <p>16 users behind vomitories. I don't remember the</p> <p>17 specific lay out of the vomitories in this one to</p> <p>18 see if it works. You can add at the suite levels,</p> <p>19 sometimes you can add wheelchair seats in those</p> <p>20 because the suites are typically designed where</p> <p>21 spectators don't block the suite seated people.</p> <p>22 Sometimes you can provide front row seating. In</p> <p>23 fact you have got that opportunity easily at the</p>	<p style="text-align: right;">Page 70</p> <p>1 Mariners stadium. Front row seating for more</p> <p>2 wheelchair users so that spectators don't stand in</p> <p>3 front of them and they still don't block the people</p> <p>4 behind them, because they are seated. And so those</p> <p>5 are -- how many did I give you?</p> <p>6 Q. I think you gave me four.</p> <p>7 A. Okay. All right. So we are going for one</p> <p>8 more. Another one is to put them in places where</p> <p>9 they are on corners where the aisle is the only</p> <p>10 thing separating them and the -- what you need to be</p> <p>11 able to see. So there are sometimes places where a</p> <p>12 wheelchair user can be -- they are looking over an</p> <p>13 aisle rather than looking over a bank of standing</p> <p>14 spectators. And like I said, there is, you know,</p> <p>15 easily fifteen or twenty of those types of solutions</p> <p>16 that you just bring there and say, you know, would</p> <p>17 any of these work in this specific location you are</p> <p>18 looking at and try to solve.</p> <p>19 Q. If I could get you to look at pages</p> <p>20 eleven and twelve of your report.</p> <p>21 A. Yes.</p> <p>22 Q. So as I understand your description of</p> <p>23 the mechanics that you went through to do your</p>
<p style="text-align: right;">Page 71</p> <p>1 analysis are set out at the bottom of page ten on</p> <p>2 through into page eleven, is that fair? I am</p> <p>3 looking at mechanics, not the conclusions.</p> <p>4 A. That sounds about right, I am just trying</p> <p>5 to see if there are any other mechanical things on</p> <p>6 prior pages or later pages. That is where certainly</p> <p>7 most everything is, if not everything.</p> <p>8 Q. Okay. And the figure that is shown on</p> <p>9 page eleven.</p> <p>10 A. Yes.</p> <p>11 Q. That is a mistake, right?</p> <p>12 A. I don't know why you think it is a</p> <p>13 mistake, it is not a mistake.</p> <p>14 Q. Okay. That figure is 802.2.2.1, lines of</p> <p>15 sight over the heads of standing spectators?</p> <p>16 A. Yes.</p> <p>17 Q. You sure that is not 802.2.2.2?</p> <p>18 A. I am not sure now that you raise the</p> <p>19 question, I would have to look at it and see.</p> <p>20 Q. So it is possible you put the wrong</p> <p>21 diagram in?</p> <p>22 A. The diagram is the correct diagram. The</p> <p>23 diagram itself -- you know, I would have to look</p>	<p style="text-align: right;">Page 72</p> <p>1 this up to see. I mean, I can't -- I can't remember</p> <p>2 the numbers of particular sections so I would have</p> <p>3 to look at it and go back and look at it and see. It</p> <p>4 could be 802.2.2.2. One of those is -- I think the</p> <p>5 first one, you may be right, I think the first one</p> <p>6 is line of sight over the heads one row in front of</p> <p>7 you and the second one is two rows in front of you.</p> <p>8 And the figure that is shown here is two rows in</p> <p>9 front of you, which is the one that applies to the</p> <p>10 Mariners stadium, at least as I did the analysis.</p> <p>11 And, wow, if I made that error, I apologize for</p> <p>12 doing it, but the figure is correct and the concept</p> <p>13 on it is correct. I am sorry?</p> <p>14 Q. In figure -- above the diagram you refer</p> <p>15 to figure 802.2.2.1, to illustrate the requirement,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And that reference is also wrong, right?</p> <p>19 A. It would be if I picked the wrong</p> <p>20 figure -- if I picked the wrong section number and</p> <p>21 figure number -- did I quote the section number</p> <p>22 anywhere in here? Let me go back to my question.</p> <p>23 This is 802. Yeah. It is possible that I quoted the</p>



James Terry

6/14/2019

Pages 73 to 76

<p style="text-align: right;">Page 73</p> <p>1 wrong figure number in here because I was quoting --</p> <p>2 I was intending to quote the figure number that goes</p> <p>3 with the figure that is displayed that goes with the</p> <p>4 over the top of the head two rows forward, over the</p> <p>5 shoulders and between the heads one row forward,</p> <p>6 that was what I was intending to plug in. So it is</p> <p>7 possible that I typed that and then just repeated</p> <p>8 it below.</p> <p>9 Q. Okay. So let me understand the kind of</p> <p>10 mechanics of what you did. I am looking now at the</p> <p>11 bottom of page ten, the paragraph beginning to</p> <p>12 perform my analysis.</p> <p>13 A. Yes.</p> <p>14 Q. So you chose what you believe to be a</p> <p>15 representative sample of ten different wheelchair</p> <p>16 spaces, right?</p> <p>17 A. Yes.</p> <p>18 Q. Then for each of the spaces you placed</p> <p>19 your camera 47.45 inches above the floor at the</p> <p>20 center of the wheelchair clear floor space at a</p> <p>21 point 3 inches away from the obstruction, most</p> <p>22 likely to stop wheelchair users from rolling further</p> <p>23 forward; is that right?</p>	<p style="text-align: right;">Page 74</p> <p>1 A. That is correct.</p> <p>2 Q. Okay. So in this analysis the camera is a</p> <p>3 proxy for a head and eye, correct?</p> <p>4 A. It is a proxy for the eye.</p> <p>5 Q. Okay. So what you are doing is you are</p> <p>6 putting it at a height above the floor, a specified</p> <p>7 height, right, 47.45 inches?</p> <p>8 A. Yes.</p> <p>9 Q. And then you are situating it in the</p> <p>10 center of the wheelchair clear floor space. So if</p> <p>11 it is 40 inches across, you are doing it in a 20</p> <p>12 inch space, right?</p> <p>13 A. Well, it is 33 inches across and so it is</p> <p>14 in the center of that 33 inch space. Now,</p> <p>15 recognizing that T Mobile stadium does not have</p> <p>16 rectangles drawn on the floor in all the sections so</p> <p>17 that you say, okay, you have got to stay right here</p> <p>18 and you have got to stay right here and you have to</p> <p>19 be between these lines, so you are approximating</p> <p>20 where you are thinking a wheelchair user might sit.</p> <p>21 It turns out not to be that critical because the</p> <p>22 people on the rows in front, both one and two rows</p> <p>23 in front of you are still going to be -- have the</p>
<p style="text-align: right;">Page 75</p> <p>1 same kind of relationship to wherever the eyes are</p> <p>2 horizontally in that plain. It is the distance from</p> <p>3 the toe stop to the eyes that is the critical</p> <p>4 dimension there in terms of its impact on the line</p> <p>5 of sight.</p> <p>6 Q. So the toe stop, is that what you are</p> <p>7 referring to there when you talk about the</p> <p>8 obstruction most likely to stop wheelchair users</p> <p>9 from rolling further forward?</p> <p>10 A. Yes.</p> <p>11 Q. Is that a consistent distance from the</p> <p>12 center spot or within the front to back spacing?</p> <p>13 A. It is a -- yes. The place that -- as I</p> <p>14 looked at it and said, you know, most wheelchair</p> <p>15 users, you are going to look at a point somewhere</p> <p>16 around maybe 4 inches above the surface on which</p> <p>17 their wheels rest. And so at that, what is going to</p> <p>18 block it, so it is blocked by different things in</p> <p>19 different places. Sometimes it is the back of the</p> <p>20 seat in front of you, sometimes it is a rail,</p> <p>21 sometimes it is a fabric that has been stretched</p> <p>22 across the front of it, sometimes it is, you know,</p> <p>23 any kind of obstruction there that would keep the</p>	<p style="text-align: right;">Page 76</p> <p>1 wheelchair user from rolling further forward.</p> <p>2 Q. Yep. So, and then your son held a</p> <p>3 carpenter's ruler in the center of the standing</p> <p>4 position of the spectator one row forward; is that</p> <p>5 right?</p> <p>6 A. One row forward and two rows forward.</p> <p>7 Q. Understood. I was going to get there. I</p> <p>8 was walking us through it.</p> <p>9 A. Yes.</p> <p>10 Q. And then he did the same thing in the</p> <p>11 standing position -- in the center of the standing</p> <p>12 position of the spectator two rows forward, right?</p> <p>13 A. At the same time, yes.</p> <p>14 Q. Okay. And the standing position, where in</p> <p>15 the space in front is it?</p> <p>16 A. How far from the -- from what point?</p> <p>17 Q. I am trying to understand it within the</p> <p>18 spacing dimensions it is in front of the seat.</p> <p>19 A. Okay. So in the lower level -- in the</p> <p>20 lower level stands it is typically going to be where</p> <p>21 the spectator in front is standing -- is just</p> <p>22 standing up and standing right in the center of that</p> <p>23 space. If they are on an upper level, which I don't</p>

James Terry

6/14/2019

Pages 77 to 80

<p style="text-align: right;">Page 77</p> <p>1 think we had that kind of situation in this, but</p> <p>2 they might step back. If they are worried about</p> <p>3 falling over the edge, they might actually step back</p> <p>4 when the seat folds up. But in these cases it was</p> <p>5 very close to the front edge, so it is going to be</p> <p>6 maybe -- depending on whether the seats fold up or</p> <p>7 whether they don't fold up, somewhere in the range</p> <p>8 of six inches from the front tier of the platform on</p> <p>9 which the standing spectator is standing.</p> <p>10 Q. So the foot -- you are saying that the --</p> <p>11 the height of the foot was six inches from the front</p> <p>12 of the platform?</p> <p>13 A. No, it is the top of their head is six</p> <p>14 inches or so from the back -- six, could be eight</p> <p>15 back, just depends on, like I said, what the level</p> <p>16 of concern the spectators have got. We tried to</p> <p>17 measure that the same distance whether we are</p> <p>18 measuring the comparable location or measuring the</p> <p>19 wheelchair user, we put it in the same relationship</p> <p>20 to the seat in front in both cases.</p> <p>21 Q. So and you did the same thing in all</p> <p>22 sections?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">Page 78</p> <p>1 Q. And so the space for the spectator</p> <p>2 standing was the same, in terms of being in the</p> <p>3 center, and the front and back dimension was the</p> <p>4 same with respect to all sections?</p> <p>5 A. Within an inch or two.</p> <p>6 Q. So do you get a different measurement if</p> <p>7 the person standing in front is further forward?</p> <p>8 A. If the standing spectator steps further</p> <p>9 forward, yes, you would get a different measurement.</p> <p>10 Q. Got it. And if they step back you would</p> <p>11 get a different measurement too, right?</p> <p>12 A. Yes, slightly.</p> <p>13 Q. And what if they stepped to the side?</p> <p>14 A. Generally not going to affect anything.</p> <p>15 Q. Okay. And when you were -- and so if they</p> <p>16 stepped to the left or the right, that doesn't</p> <p>17 change anything, in your view?</p> <p>18 A. It generally doesn't. And the reason is</p> <p>19 that you have got -- you are looking over the</p> <p>20 shoulders of the people one row in front of you and</p> <p>21 you are looking over the top of their heads, and so</p> <p>22 when you are trying to draw that line, you are</p> <p>23 looking at the top of those heads and the top of</p>
<p style="text-align: right;">Page 79</p> <p>1 their heads is a line. And that is the way -- that</p> <p>2 is the way stadium designers have designed</p> <p>3 sightlines. And so where you stand in that lateral</p> <p>4 plain is not -- doesn't affect the design.</p> <p>5 Q. Did you do any analysis here about</p> <p>6 whether there was any change in the perspective from</p> <p>7 moving the spectators laterally?</p> <p>8 A. That is not the design criteria, so there</p> <p>9 would have been no point in doing that. No, we did</p> <p>10 not attempt to say, well, what if this guy stands on</p> <p>11 his left leg instead of his right leg or what if he</p> <p>12 shifts over to lean against his companion or</p> <p>13 whatever, we didn't attempt to do that because that</p> <p>14 doesn't affect the way you design the stadium.</p> <p>15 Q. And you didn't also do an analysis to say</p> <p>16 what if the person was standing three inches</p> <p>17 forward, right?</p> <p>18 A. We did not.</p> <p>19 Q. Okay. When you were doing your analysis,</p> <p>20 did you engage in any variability with respect to</p> <p>21 the placement of the wheelchair proxy? So in other</p> <p>22 words, did you do any changes in variation in</p> <p>23 lateral movement for the wheelchair proxy, the</p>	<p style="text-align: right;">Page 80</p> <p>1 camera?</p> <p>2 A. I selected the location to put the camera</p> <p>3 based on the ability to document the sightlines at</p> <p>4 that location. So, for example, if a wheelchair user</p> <p>5 was sitting right next to the aisle and looking down</p> <p>6 the aisle I did not attempt to photograph it from</p> <p>7 there because I would have had to have put the</p> <p>8 standing spectator in the aisle. So I moved it to</p> <p>9 the wheelchair user down to the -- if I am on the</p> <p>10 third baseline, I moved it to the side that would</p> <p>11 allow you to have a spectator standing in front of</p> <p>12 them, directly in front of them, so that I could</p> <p>13 document what the majority of the wheelchair users</p> <p>14 in that section would be seeing in terms of line of</p> <p>15 sight over standing spectators.</p> <p>16 Q. So as I understand it, there are not</p> <p>17 fixed places for the wheelchair users to sit in most</p> <p>18 of the spaces; is that correct?</p> <p>19 A. Some of the locations had numbers that</p> <p>20 indicated what -- where your generally -- generally</p> <p>21 where your ticket space was supposed to go, but I</p> <p>22 don't recall seeing lines painted on the floor that</p> <p>23 would say, you know, this is the 33 inch wide, 48</p>

James Terry

6/14/2019

Pages 81 to 84

<p style="text-align: right;">Page 81</p> <p>1     inch long wheelchair space that the person who holds</p> <p>2     ticket number three or seat number three is supposed</p> <p>3     to be. There may have been some of those, I don't</p> <p>4     recall those. But so there were some numbers, but</p> <p>5     there weren't specifically designated locations to</p> <p>6     measure that 3 -- the center of that 33 inch space</p> <p>7     from.</p> <p>8         Q. Got it. Well, let me ask you this, if you</p> <p>9     were to do your analysis, take your camera, move it</p> <p>10    back two inches and two inches to the left, that</p> <p>11    would give you different data, right?</p> <p>12         A. The moving back would give you different</p> <p>13    data, moving it to the left or right would not give</p> <p>14    you different data.</p> <p>15         Q. That wouldn't give you different</p> <p>16    sightline between spectators?</p> <p>17         A. Between spectators?</p> <p>18         Q. Right. So if you were offset as opposed</p> <p>19    to directly behind, you would have a different</p> <p>20    sightline, right?</p> <p>21         A. Directly behind who?</p> <p>22         Q. If you, the viewer in the wheelchair,</p> <p>23    were offset vis-a-vis the person in front of you,</p>	<p style="text-align: right;">Page 82</p> <p>1     you would have a different sightline than if you</p> <p>2     were directly behind them, right?</p> <p>3         A. No.</p> <p>4         Q. No?</p> <p>5         A. No, the calculations are still the same.</p> <p>6         Q. Got it. So they would still have, you are</p> <p>7     saying, a different potentially blocked view of the</p> <p>8     infield even if they were in staggered seating?</p> <p>9         A. When you are looking between the heads of</p> <p>10    the people one row in front of you, you see certain</p> <p>11    portions of the field blocked by those heads. The --</p> <p>12         Q. And if you move -- I am sorry.</p> <p>13         A. The analysis of those, the design</p> <p>14    analysis of those that you would design when you are</p> <p>15    trying to figure out how high does this platform</p> <p>16    need to be, that design analysis is not reflected by</p> <p>17    who is it sitting in which location -- in which</p> <p>18    lateral shifting, that doesn't affect the design</p> <p>19    analysis.</p> <p>20         Q. So to go back to my question, if you had</p> <p>21    moved your camera back two inches and you moved your</p> <p>22    sight -- your spectator in front forward two inches,</p> <p>23    that would give you different data, right?</p>
<p style="text-align: right;">Page 83</p> <p>1         A. Yes, it would.</p> <p>2         Q. It would give you better sightline,</p> <p>3     right?</p> <p>4         A. No, it would give you worse. You said</p> <p>5     move the wheelchair user back and the standing</p> <p>6     spectator forward?</p> <p>7         Q. How about if you move the wheelchair user</p> <p>8     forward?</p> <p>9         A. If you move the wheelchair user forward,</p> <p>10    they get better sightlines.</p> <p>11         Q. Okay. And you say moving them laterally</p> <p>12    makes no difference?</p> <p>13         A. It would to the person moving, it does</p> <p>14    not to -- it does not make a difference in the</p> <p>15    design of the facility or in the compliance</p> <p>16    analysis, it doesn't make a difference.</p> <p>17         Q. Well, but the person who is actually</p> <p>18    trying to see the playing surface would see a</p> <p>19    different view of the playing surface if they moved</p> <p>20    laterally, right?</p> <p>21         A. They might. It depends on where the</p> <p>22    person in front of them or the people in front of</p> <p>23    them moved.</p>	<p style="text-align: right;">Page 84</p> <p>1         Q. That is correct. All I am getting at is</p> <p>2     there are differences here that you did not address,</p> <p>3     including this, right?</p> <p>4         A. There are dynamic differences during a</p> <p>5     game that are not addressed by the design standards.</p> <p>6     The design standards tell you how to design it so</p> <p>7     that you give people comparability as much as that</p> <p>8     can be handled from a design standpoint.</p> <p>9         Q. Right. And it is challenging when you do</p> <p>10    not have prescriptive standards, right?</p> <p>11         A. I don't think so.</p> <p>12         Q. Got it. In your report on page twelve and</p> <p>13    thirteen, you have a section regarding number of</p> <p>14    wheelchair and companion seating locations.</p> <p>15         A. Yes.</p> <p>16         Q. Do you have a firm opinion or is this</p> <p>17    opinion still contingent, it wasn't clear to me?</p> <p>18         A. Yes. You want me to give you that</p> <p>19    opinion?</p> <p>20         Q. Yes, I just want to know what the opinion</p> <p>21    is.</p> <p>22         A. Yes, the opinion is that the</p> <p>23    compliance with the 1991 standards in terms of the</p>

James Terry

6/14/2019

Pages 85 to 88

<p style="text-align: right;">Page 85</p> <p>1 minimum number of wheelchair and companion seating  2 locations is that because the seating -- the  3 wheelchair seating did not comply with the standards  4 by March 15 of 2012, it did not comply with the '91  5 standards, then you did not have the minimum number  6 of seats required under the 1991 standards.  7 Because --  8 Q. So do you know how -- I am sorry, do you  9 know how many seats there were in 1999 when they  10 opened?  11 A. I don't.  12 Q. Do you know how many accessible seats  13 there were in 1999 when the stadium opened?  14 A. I don't have evidence of but three.  15 Q. I am sorry?  16 A. I only see three that looked like they  17 would have had line of sight compliance when it  18 opened. And those were the three behind home plate.  19 Q. I am asking about your opinion as set  20 forth in the section numbered two.  21 A. Yes.  22 Q. On pages twelve and thirteen. I have read  23 that and understood that to be something different</p>	<p style="text-align: right;">Page 86</p> <p>1 than a sightline opinion.  2 A. It is a layered opinion. So a wheelchair  3 position that doesn't have line of sight that is  4 sold as a ticketed seat is not actually a wheelchair  5 seat, it is a ticketed location. If it is not  6 compliant with the standards, then you can call it  7 accessible, you can count it as accessible, and for  8 the purposes of this I have counted them that way  9 and then qualified that to say, but, just for the  10 purpose of doing the analysis, if it is not a  11 wheelchair -- if it is not a compliant wheelchair  12 position, you can't really count it. So I have tried  13 to look at it both ways so you can get a chance to  14 understand how many there would have been if they  15 had been made compliant in terms of sightlines. But  16 the numbers under the '91 standards did not, as far  17 as I can tell, based on the information that we  18 received related to the stadium for this case,  19 related to those numbers, there weren't enough  20 numbers to have met the '91 standards if they all  21 had proper sightlines or if all or substantially had  22 proper sightlines, there weren't enough of them to  23 meet that. Now I saw something that there had been</p>
<p style="text-align: right;">Page 87</p> <p>1 some changes, but I don't know what those changes  2 were.  3 Q. Right. Could you point to me in section  4 two where you are talking about sightline?  5 A. For the purpose of the expert report I  6 split these up between one and two.  7 Q. I understand. Section two makes no  8 mention of sightlines, correct?  9 A. I will have to look back through and see  10 if it does or not. It may not.  11 Q. It is page twelve and thirteen and I am  12 trying to understand, you were talking about  13 sightline, there is no mention of it in there.  14 A. Okay. Yes, so I. --  15 Q. As I understand it, then, section two,  16 your opinion of whatever it is in section two, is  17 not related to sightlines because you are not even  18 mentioning them, right?  19 MR. REYNOLDS: Object to the form.  20 A. Right, okay. Now I understand what you  21 are doing and I remember how I split this opinion  22 up. So I analyzed those two obligations separately  23 for the purpose of this, and just looking at numbers</p>	<p style="text-align: right;">Page 88</p> <p>1 and saying, did you have enough numbers, ignoring  2 sightline problems, did you have enough numbers?  3 The answer was no, from the information that I have,  4 you did not have enough numbers to meet -- you don't  5 have enough numbers now to meet the 1991 standards.  6 Excuse me, you don't have enough to meet the '91,  7 you have more than enough to meet the 2010 standards  8 if you are just looking at numbers.  9 Q. You don't know how many accessible seats  10 there were in 1999, right?  11 A. Not specifically, not thoroughly, I do  12 not know what was there in '99.  13 Q. Right. And you do not have any  14 information about how many accessible seats there  15 were in 2012?  16 A. All I have is the documents that were  17 furnished to us and I don't -- to my knowledge they  18 are not 2012 numbers.  19 Q. Right. And they are not 2015 numbers  20 either, are they?  21 A. I don't believe so. I don't know if there  22 were changes. I don't know when changes were made. I  23 know that changes were made. I asked for the changes</p>

**James Terry****6/14/2019**

Pages 89 to 92

Page 89	Page 90
<p>1 and my client has been unable to get those from the 2 stadium authority. And so absent that information, I 3 am making my analysis based on what I was able to 4 obtain.</p> <p>5 Q. I understand. And I want to be very clear 6 that all I am trying to understand is what you 7 looked at. You did not look at any seating 8 information that predated 2017, right?</p> <p>9 A. No, that is not correct.</p> <p>10 Q. Okay. Tell me what you looked at with 11 respect to the number of accessible seats at T 12 Mobile park for dates prior to 2017?</p> <p>13 A. All right. I am looking back through the 14 documents here, because I received some documents 15 right before my expert report was turned in, and 16 I -- I am trying to see which ones came in before 17 and which ones came in after. All right. We have the 18 2019 seating manifest, so those were seating numbers 19 from that. We got information from the Diamond Club 20 with revisions through January 2019, and those were 21 under construction when we were there, we couldn't 22 tell anything about it from there, so we were 23 relying on those drawings. And so I believe it is</p>	<p>1 possible that some of these Defendant's responses to 2 interrogatories include, for example, the seating 3 plan that we saw from Hussey that I believe had a 4 date of 1998 on it, and that document showed some 5 wheelchair positions both in what is now the Diamond 6 Club area and it seems like it may have had 7 wheelchair seating positions in the back. That 8 drawing was not a complete series of seating 9 drawings for the whole stadium, so we didn't have 10 enough information to calculate anything else about 11 the total number of wheelchair seats in the stadium.</p> <p>12 Q. Fair enough. And what I am getting at 13 here, I am looking at the basis for your opinions 14 that is on twenty-eight and twenty-nine into thirty. 15 I do not see anything in here that refers to seating 16 information that predates 2019, if I am incorrect, 17 please let me know.</p> <p>18 A. You -- and again, I can't remember when 19 that Hussey drawing came in, but that was a 1998 20 seating drawing. And it may have been one of the 21 Defendant's answers to the complaint, Defendant's 22 responses to interrogatories, I am looking at two 23 and three, or Defendant's responses and objectives</p>
Page 91	Page 92
<p>1 to Plaintiff's interrogatories and request for 2 production of documents set two, number seven, so it 3 may have been in one of those. I can't recall where 4 it was, but if it was -- if that came in before my 5 report was in, then that is where it is.</p> <p>6 Q. All right. And when you refer to the 7 Hussey drawing, what are you referring to?</p> <p>8 A. There was a series of documents that we 9 got, one of which the last page in that particular 10 set, the last page was what looked to me like a shop 11 drawing from Hussey. They apparently were the 12 seating supplier for the original stadium. And so 13 any time you design a large arena or stadium, you -- 14 the actual dimensions are provided to the seating 15 provider, they then come back and say, this seat 16 right here will be twenty-two, this will be a 17 twenty-three, this will be a twenty-four, this will 18 be a twenty-two, and they do that for every single 19 fixed seat that they are selling. And that shows 20 exactly how the contractor that is assembling those 21 seats, that shows exactly what to put in each place. 22 So that is the drawing that showed that area for the 23 Diamond Club and a lot of or maybe all of the</p>	<p>1 section behind it.</p> <p>2 Q. The Hussey drawing you are referring to 3 was not the complete stadium drawing, right?</p> <p>4 A. It was not.</p> <p>5 Q. And it was -- you said it was 1998?</p> <p>6 A. I believe that was the last revision date 7 on it.</p> <p>8 Q. Okay. You don't know if that is, in fact, 9 what was implemented in the stadium when it was 10 opened in 1999, do you?</p> <p>11 A. I do not.</p> <p>12 Q. Okay. So other than the Hussey drawing, 13 this incomplete 1998 document, and the 2019 seating 14 manifest, the Diamond Club drawings that are 15 referred to in pages four and five of your opinion, 16 you are not able to identify any seating information 17 that predates 2019, correct?</p> <p>18 A. Any seating information, I wouldn't say 19 that, because there are pictures in the -- yeah, 20 there are pictures that Brenda took and things like 21 that, but I can't do a seating analysis. I don't 22 have sufficient information to do a seating analysis 23 of accounts prior to the dates of the documents that</p>

James Terry

6/14/2019

Pages 93 to 96

<p style="text-align: right;">Page 93</p> <p>1 we were furnished.</p> <p>2 Q. Got it. So you don't know then whether or</p> <p>3 not, setting aside sightlines, there were a</p> <p>4 sufficient number of accessible seats in '99 or 2005</p> <p>5 or 2010 or today?</p> <p>6 A. What do you mean or today?</p> <p>7 Q. Well --</p> <p>8 A. You mean post writing my report? So it</p> <p>9 is possible that they came back and changed things</p> <p>10 since I was there February 5, yes, anything could</p> <p>11 have been changed.</p> <p>12 Q. You don't know, though, if there was</p> <p>13 sufficient numbers of seats in 1999 to satisfy the</p> <p>14 '91 standard, do you?</p> <p>15 A. I do not have information about that.</p> <p>16 Q. Okay. That is really what I wanted to</p> <p>17 know. So when your report says on page thirteen, the</p> <p>18 facility does not have enough wheelchair companion</p> <p>19 seats under the 1991 standards, you are not talking</p> <p>20 about whether it complied in 1999, right?</p> <p>21 A. I am in the second half of that sentence.</p> <p>22 Q. Right, but you don't know that?</p> <p>23 A. I don't have specific knowledge of that.</p>	<p style="text-align: right;">Page 94</p> <p>1 I just don't know where you would have put all the</p> <p>2 extra wheelchair seats that you would have had to</p> <p>3 have in order to meet the '91 standards. That is why</p> <p>4 I said it didn't appear that you had enough to meet</p> <p>5 the '91 standards. There just aren't -- there don't</p> <p>6 appear to be enough places to put them.</p> <p>7 Q. Fair enough. But you are speculating,</p> <p>8 right?</p> <p>9 A. I am. That is why I said appear rather</p> <p>10 than quoting as a fact.</p> <p>11 Q. Got it. Let's turn to number three on the</p> <p>12 same page, thirteen. I think this sort of deals</p> <p>13 with the distribution of seating issues; is that</p> <p>14 correct?</p> <p>15 A. Generally.</p> <p>16 Q. Do you believe that the accessible</p> <p>17 seating at T Mobile park has sufficient horizontal</p> <p>18 distribution?</p> <p>19 A. Let me look at my drawing that shows</p> <p>20 where all of the seats are.</p> <p>21 Q. Yeah, if you like, Exhibit Number 4, the</p> <p>22 Court Reporter can show that to you, you are welcome</p> <p>23 to look at that as well.</p>
<p style="text-align: right;">Page 95</p> <p>1 (Defendant's Exhibit 4 was marked</p> <p>2 for identification.)</p> <p>3 A. Okay. With limited exceptions, I would</p> <p>4 say that it has good horizontal distribution.</p> <p>5 Q. Your report does not comment on</p> <p>6 horizontal distribution, that is why I was asking</p> <p>7 the question.</p> <p>8 A. It doesn't do it under that category. It</p> <p>9 just says that there are certain sections that have</p> <p>10 no wheelchair seating in them.</p> <p>11 Q. Certain sections?</p> <p>12 A. Yes. So for example, between center</p> <p>13 field and the third base foul line, there are no</p> <p>14 wheelchair seating options available.</p> <p>15 Q. Got it. There are wheelchair seating</p> <p>16 options surrounding the entire field but for that</p> <p>17 piece of left field, right?</p> <p>18 A. Well, at the -- at that level, that is</p> <p>19 the one that is limited, but you have also got the</p> <p>20 Hit It Here Cafe area on that level that is -- that</p> <p>21 has no -- no wheelchair seats between whatever that</p> <p>22 section number is, 214, there is nothing on that</p> <p>23 level between 214 and under the scoreboard. And</p>	<p style="text-align: right;">Page 96</p> <p>1 under the scoreboard I am not really sure what is</p> <p>2 going on there, because my drawing showed a</p> <p>3 different dispersal than what the Exhibit 4 shows</p> <p>4 under the scoreboard. So there is a band in there</p> <p>5 where at that level you don't have sufficient</p> <p>6 horizontal -- or we don't know. They wouldn't let us</p> <p>7 into the Hit It Here Cafe, so I don't really know</p> <p>8 what is in there, other than the fact that</p> <p>9 Ticketmaster doesn't have any wheelchair seating</p> <p>10 positions available for any of the dozens of games</p> <p>11 that I tried to see if there were wheelchair</p> <p>12 positions in Hit It Here, I couldn't find any</p> <p>13 tickets available for wheelchair users in there, and</p> <p>14 since we weren't allowed in, you know, I hate to</p> <p>15 think the worst, but I just don't have evidence that</p> <p>16 there are any chairs in there. And I don't see them</p> <p>17 in Exhibit 4 either.</p> <p>18 Q. You don't have an opinion one way or the</p> <p>19 other, you just don't know, right?</p> <p>20 A. No, I have an opinion that I can't find</p> <p>21 any evidence that there are wheelchair positions</p> <p>22 there. It is not in Exhibit 4 that you just handed</p> <p>23 me, it is not on Ticketmaster, and I wasn't allowed</p>



**James Terry****6/14/2019**

Pages 97 to 100

Page 97

1 to see whether it was there or not. So I have no  
2 evidence that there is any wheelchair positions in  
3 there and all the evidence points to the fact that  
4 there isn't.

5 Q. But you don't know?

6 A. With absolute certainty, have I put my  
7 own eyes on it to know, no. But I have no evidence  
8 that it is and I have looked for that evidence. And  
9 you just handed me evidence that doesn't indicate  
10 where it is. There is a little wheelchair shown in  
11 one corner of it, but I have -- I don't know what  
12 that means and it is -- it is -- so I can't --

13 Q. Is it your understanding, Mr. Terry, that  
14 the seats in Hit It Here are ticketed seats?

15 A. It is, therefore there should be  
16 wheelchair positions in there.

17 Q. Okay. Do you know if there are wheelchair  
18 positions, have you looked at it?

19 A. I have tried to find them. I was not  
20 allowed into the space, I couldn't control that. We  
21 were not allowed. We waited 30 minutes to go in and  
22 we were not allowed to go in. And I looked on  
23 Ticketmaster --

Page 98

1 Q. It is really just a yes or no question.

2 You haven't seen it, you don't know, right?

3 MR. REYNOLDSON: Object to the form.

4 A. I know what I have seen and I have seen  
5 that Ticketmaster had no wheelchair seats available  
6 in there, but there were lots of other -- there were  
7 lots of other seats in there, but no wheelchair  
8 seats available in any of the games I tried to get  
9 them or find out if they were available.

10 Q. Which games were those?

11 A. I don't know.

12 Q. Okay. So you can't tell us today which  
13 game days you looked at?

14 A. I can tell you --

15 Q. For wheelchair tickets?

16 A. I can tell you some of the days I looked  
17 at, because they were the same days that we based  
18 some of our reports on. The rest of them -- yeah,  
19 counts from Ticketmaster for the 5/28 game and  
20 seating manifest.

21 Q. Are you referring to something in your  
22 report?

23 A. Attachment F.

Page 99

1 Q. Yep. Thank you.

2 A. So on April 16th we looked at all of the  
3 seats available in the -- in the stadium. And that  
4 was the basis for our counts for attachment F and  
5 those -- as of April 16, we were looking at the May  
6 28th game to do our count. And then we compared  
7 that to the manifest that was provided to us in this  
8 case. So I know we looked at that one. We looked at  
9 -- I personally looked at probably at least a couple  
10 of dozen other dates trying to find where they were  
11 in there and I couldn't find them at all.

12 Q. Your report refers to attachment F, an  
13 analysis that you derived from looking at  
14 Ticketmaster on April 16 for a particular game on  
15 May 28, right?

16 A. Yes.

17 Q. And you do not have information and it is  
18 not in your report regarding that same search for  
19 any other dates, right?

20 A. It is not in my report.

21 Q. And you don't have an opinion about, for  
22 example, what seating was available on June 2?

23 A. I don't recall looking at June 2. I don't

Page 100

1 remember if that was one of the dates that I looked,  
2 so I don't have -- right now, I don't have an  
3 opinion about whether it was -- whether there was a  
4 wheelchair seat or any wheelchaired seats in there  
5 on June 2.

6 Q. How about on July 17?

7 A. I could not tell you any specific date.

8 Q. And you don't have an opinion about it,  
9 right?

10 A. I don't have an -- I don't have an expert  
11 opinion and I don't have the facts in front of me to  
12 state something on the record right now.

13 Q. Got it. And you don't -- September 10,  
14 same question?

15 A. Same answer.

16 Q. Okay. Fair enough. And so as I read your  
17 report on page 15, you are, I think, opining that  
18 there is a lack of vertical dispersal; is that  
19 right?

20 A. Yes.

21 Q. And the vertical dispersal, what is your  
22 opinion here as to what that should be?

23 A. It is the opinion that is listed in my

**James Terry****6/14/2019**

Pages 101 to 104

<p style="text-align: right;">Page 101</p> <p>1 report, that the -- that you don't have enough</p> <p>2 vertical dispersal to give wheelchair users</p> <p>3 comparable ticket prices and sightlines.</p> <p>4 Q. Okay. Did you look at or ever seen</p> <p>5 Malcolm Rogel's declaration?</p> <p>6 A. I don't recall it. What did that</p> <p>7 deposition talk about? If you can give me some</p> <p>8 details, I may be able to remember.</p> <p>9 Q. Yeah, it is a declaration, not a</p> <p>10 deposition. Mr. Rogel went out and did a search for</p> <p>11 tickets at a particular game and he found tickets in</p> <p>12 basically every horizontal position around the field</p> <p>13 and in all of the levels in prices ranging from 17</p> <p>14 dollars to 75 dollars. Were you aware of that?</p> <p>15 A. I don't recall seeing that. I may have,</p> <p>16 but I don't recall seeing that. That would not have</p> <p>17 changed my opinions.</p> <p>18 Q. Okay. Just wondering. Because there was a</p> <p>19 range of tickets from 17 dollars, 20 dollars, 26</p> <p>20 dollars, 30 dollars, 35, 39, 55, 60 and 75 dollars,</p> <p>21 and the 75 was for the Diamond Club front row seats.</p> <p>22 All right. So based on that, is there some other</p> <p>23 range of pricing that you believe should be</p>	<p style="text-align: right;">Page 102</p> <p>1 available?</p> <p>2 A. I believe that you should take the</p> <p>3 guidance that the Department of Justice has given as</p> <p>4 to how to interpret that.</p> <p>5 Q. Okay. What is that guidance, what are you</p> <p>6 referring to?</p> <p>7 A. There is guidance that the Department of</p> <p>8 Justice gave in the -- in the 2010 standards and</p> <p>9 regulations. And I believe it is in the preamble to</p> <p>10 that, maybe in the guidance document that they</p> <p>11 listed -- that they published with the 2010</p> <p>12 standards, but I believe it may have been in the</p> <p>13 preamble, the discussion of what they intended where</p> <p>14 they describe what your -- what their expectation is</p> <p>15 for -- for ticket price dispersal.</p> <p>16 Q. And what would be the guidance -- do you</p> <p>17 recall what that guidance is with any specificity?</p> <p>18 A. Generally that you need to give people</p> <p>19 pricing options, that -- people with disabilities</p> <p>20 pricing options that are comparable to those</p> <p>21 provided for other people. And that you not -- that</p> <p>22 you -- if people have the opportunity to get a -- if</p> <p>23 the general public has an opportunity to get seats</p>
<p style="text-align: right;">Page 103</p> <p>1 that have, you know, that are 125 dollar seats or</p> <p>2 450 dollar seats, and there are benefits to doing</p> <p>3 that, either because you are closer to the action,</p> <p>4 because you have a better chance of getting tossed a</p> <p>5 foul ball when it comes off the sideline, or you are</p> <p>6 in some other advantageous position, that you have</p> <p>7 the opportunity to get that because of your -- you</p> <p>8 are paying more for your ticket. And if there is not</p> <p>9 a way to get that ticket because there is a</p> <p>10 wheelchair seat in that particularly desirable</p> <p>11 location, that you can provide that same ticket</p> <p>12 price in a more desirable location that gives you as</p> <p>13 close to that experience as you can get. And that</p> <p>14 experience is my word. But you got something that</p> <p>15 you can go to a better place for that same ticket</p> <p>16 price and that is -- that is giving you the kind of</p> <p>17 comparability that was intended by the regulations.</p> <p>18 Q. Well, let me ask you this, is there some</p> <p>19 sort of guidance that you would point to that</p> <p>20 predates the 2010 standards on this issue?</p> <p>21 A. On the issue of ticket price</p> <p>22 comparability?</p> <p>23 Q. Yep.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Yes, there was -- there were other</p> <p>2 documents that have been, you know, over the years</p> <p>3 have come out that explain that to greater and</p> <p>4 greater and greater specificity. And one of the --</p> <p>5 one of the things that has changed drastically, as</p> <p>6 you know, in the last 25, 30 years, is that ticket</p> <p>7 pricing has become more and more differentiated so</p> <p>8 that rather than having, you know, lower bowl price</p> <p>9 and mid bowl price and nose bleed price and maybe</p> <p>10 different in the bleachers, now you have got maybe</p> <p>11 20 or 30 or 75 prices. And now with dynamic</p> <p>12 pricing, one seat price might change depending on</p> <p>13 what time of day you log in and what your ZIP code</p> <p>14 is. And so that kind of difficulty, as ticket</p> <p>15 pricing policies changed, Justice adjusted that --</p> <p>16 adjusted their guidance to reflect their</p> <p>17 expectations based on the new policies. So those</p> <p>18 have changed over time.</p> <p>19 Q. Could you read back the question to him,</p> <p>20 please, Court Reporter?</p> <p>21 (The desired portion of the</p> <p>22 transcript was read back.)</p> <p>23 A. Some sort of guidance to me is a very</p>



James Terry

6/14/2019

Pages 105 to 108

Page 105	Page 106
<p>1 broad question. I answered a very broad question</p> <p>2 with a truthful, accurate answer. I do not have in</p> <p>3 front of me a list of all of those guidance</p> <p>4 documents and I cannot tell you exactly what they</p> <p>5 are. I can tell you that they exist. I can come back</p> <p>6 and find them for you if you need me to do that, but</p> <p>7 I can't -- I can't tell you what they all were. I</p> <p>8 have stated that there are dozens of those kinds of</p> <p>9 documents that have been out there the whole time, I</p> <p>10 just don't have them in front of me.</p> <p>11 Q. I just want to be clear, you have</p> <p>12 identified for me the 2010 standards providing</p> <p>13 guidance from DOJ, and are you able, as you sit</p> <p>14 here, to provide me with any guidance from the DOJ</p> <p>15 that predates that 2010 standard?</p> <p>16 MR. REYNOLDSON: Objection, asked and</p> <p>17 answered.</p> <p>18 Q. It is a yes or no question.</p> <p>19 A. Are you asking me if I can give you a</p> <p>20 document -- any guidance from DOJ? Are you looking</p> <p>21 for a specific document that you want me to put in</p> <p>22 front of you or do you want me to tell you a</p> <p>23 specific document date and authorship and -- what do</p>	<p>1 you want in that?</p> <p>2 Q. Well, I want anything that is similar to</p> <p>3 what you've articulated previously. You identified</p> <p>4 2010 standards as providing guidance on pricing with</p> <p>5 respect to DOJ's perspective. And I am just saying</p> <p>6 to you, please tell me, if you are aware, of</p> <p>7 anything else that predates that that is similar in</p> <p>8 the since of providing DOJ guidance on pricing. And</p> <p>9 if the answer is you can't identify something here</p> <p>10 today, that is fine, I just want to know.</p> <p>11 A. The answer is I did. First of all, the</p> <p>12 standards don't talk about pricing in the level of</p> <p>13 specificity that the preamble to the regulations</p> <p>14 does or that the regulations issued in 2010 provide.</p> <p>15 So those two documents provide more pricing</p> <p>16 information than the standards themselves provide.</p> <p>17 Department of Justice published a guidance document</p> <p>18 that went with the standards and that document may</p> <p>19 have it, I don't recall if that has pricing</p> <p>20 information in it or not. And you want something</p> <p>21 predating that, so I just want to make sure we</p> <p>22 are -- I didn't just say it was the standards, I</p> <p>23 said those other documents as well. Predating that,</p>
Page 107	Page 108
<p>1 there were lots of documents, I do not have any of</p> <p>2 those documents with me, I do not remember the dates</p> <p>3 or the specifics of those documents, other than the</p> <p>4 ones we have already discussed, other than the</p> <p>5 Department of Justice's many documents that they've</p> <p>6 weighed in on in terms of their opinions about the</p> <p>7 Olympics -- the unsealed documents on the Olympics</p> <p>8 say that it was all or substantially all the spaces.</p> <p>9 Only the anthropometrics in that, you are telling me</p> <p>10 now -- or today you are telling me that those</p> <p>11 anthropometrics were sealed. That is the only</p> <p>12 thing -- I mean, the fact that sightline over</p> <p>13 standing spectators was all or substantially all,</p> <p>14 that was in the news. That was in the news all over</p> <p>15 the place. Justice issued press releases in it. It</p> <p>16 was in the document that is available on their web</p> <p>17 site. So that was something in '96. The Ellerbe</p> <p>18 Becket case was out there, Justice's stance on that.</p> <p>19 So like I said, lots of those kind of documents, I</p> <p>20 don't have any of them with me.</p> <p>21 Q. Mr. Terry, I am asking about pricing. In</p> <p>22 section three of your report, starting on page</p> <p>23 thirteen, you are talking about, in part, about</p>	<p>1 pricing.</p> <p>2 A. Yes.</p> <p>3 Q. And you identified -- in this section</p> <p>4 here you identify certain sections of the 1991</p> <p>5 standards and you identify certain sections of the</p> <p>6 2010 standards, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Is there anything else that you were</p> <p>9 relying upon for your analysis in section three?</p> <p>10 A. 36.302 F of the title two regulations,</p> <p>11 36.406 F of the title three regulations.</p> <p>12 Q. These are things all cited in that</p> <p>13 paragraph, everything is in that paragraph. Is</p> <p>14 there something else?</p> <p>15 A. That I relied on in what? In developing</p> <p>16 my opinion?</p> <p>17 Q. To render this opinion. Is there some</p> <p>18 guidance, other than the document section that you</p> <p>19 were citing there, that you are relying upon, that</p> <p>20 is what I am trying to figure out?</p> <p>21 A. Okay. My history of doing this for all of</p> <p>22 these years. I've tried to lay out the basis of</p> <p>23 those things in the answers to this same question</p>

James Terry

6/14/2019

Pages 109 to 112

Page 109

1 already, and -- so those particular ones did not  
2 completely -- I can't remember which of those  
3 discussed pricing and which ones didn't, I can go  
4 look that up. But in all of those kinds of  
5 documents, Justice was trying to attempt this same  
6 thing. And I would have to look at which of all of  
7 those Technical Assistance documents, guidance  
8 materials, letters, other briefs that they issued,  
9 settlement agreements, all of those kind of things  
10 where they were trying to explain it and do so  
11 publicly, I would have to go back and look at which  
12 ones specifically address the issue of ticket price  
13 dispersal. But all of those have had a bearing on my  
14 development of the opinion that I have rendered.

15 Q. Other than the specific things referred  
16 to in the first paragraph in section three on page  
17 thirteen, is there something that you can identify  
18 for me that you relied upon for this opinion?

19 A. For this particular opinion?

20 Q. Yes.

21 A. Number twenty-six, 2010 revised  
22 requirements of ticket sales by the U.S. Department  
23 of Justice published 7/7/2011.

Page 110

1 Q. Where?

2 A. I am sorry?

3 Q. What are you referring to, is it in  
4 your --

5 A. Page thirty, basis for opinions.

6 Q. Yep.

7 A. Obviously I am now limiting what I am  
8 saying to those things that were from the Department  
9 of Justice, so I am not looking at, you know, all  
10 the places where I got information about ticket  
11 prices on MLB, et cetera.

12 Q. Here is what I am trying to understand,  
13 and I am really not trying to play a game, I just  
14 want to know the things that are official that you  
15 relied upon for purposed of your opinion in that  
16 section three. And if there is something that you  
17 haven't listed there that you are relying upon, then  
18 tell me, and if there isn't anything, that is fine  
19 too. I just want to know it.

20 A. I get it. I get it. Yeah, and my  
21 difficulty is sitting here right now, after reading  
22 thousands and thousands of pages on this topic over  
23 the last 29 years, trying to come up with a specific

Page 111

1 document that mentioned this specific requirement  
2 and how I have interpreted this requirement, I have  
3 taken what I have read in all of those documents, I  
4 have internalized them, I have tried to understand  
5 them and now I am trying to spit out to you, as  
6 though I had a photographic memory, which of those  
7 documents specifically addressed this issue, is  
8 beyond my memory.

9 Q. Well --

10 A. And so I've tried to give you a sense of  
11 where they came from, but specific document lists, I  
12 can't tell you right now what they are beyond the  
13 ones I have already given you.

14 Q. Okay. Just so you understand, this is not  
15 me trying to harass you.

16 A. No, I get that.

17 Q. When we take a deposition of an expert,  
18 we are entitled to know the full basis of the  
19 expert's opinion. One of the things that I like to  
20 try and understand is what is the stuff you are  
21 looking at to rely upon. And what I hear you telling  
22 me is other than the things you have identified, you  
23 don't have something in particular in mind other

Page 112

1 than your experience in the past?

2 A. I would say experience in the past is  
3 different from understanding of the documents that I  
4 have read and the cases that I have worked on, I  
5 would say that is different from experience in the  
6 past.

7 Q. Okay. I don't want to argue with you. You  
8 can't tell me a document. You told me you've read a  
9 lot of things and you have digested it. I will let  
10 that go. That is fine.

11 A. Okay. I wish I could give you the  
12 specific details, I just don't have a photographic  
13 memory.

14 Q. What you can't do is tell me what you  
15 relied on other than what you cited?

16 A. That is a legal question, I won't argue  
17 it, I don't know.

18 Q. It is a factual question, sir.

19 A. Okay.

20 Q. Would you look at your attachment F,  
21 please?

22 A. Okay. I am there.

23 Q. Is your analysis of pricing,

James Terry

6/14/2019

Pages 113 to 116

<p style="text-align: right;">Page 113</p> <p>1 distribution, variability, comparability based on</p> <p>2 data about T Mobile park other than what is in</p> <p>3 attachment F?</p> <p>4 A. Attachment F reflects what I knew at the</p> <p>5 time, which was sufficient to develop the opinion</p> <p>6 that is in my report. I have learned more since</p> <p>7 then, but it was sufficient, and nothing that I have</p> <p>8 learned has contradicted or counteracted or even</p> <p>9 reduced the opinions that I have listed in my</p> <p>10 report.</p> <p>11 Q. All I am asking is this, when you wrote</p> <p>12 the report and articulated the opinions in that sub</p> <p>13 section three about ticket pricing, I understand</p> <p>14 that the factual information upon which you were</p> <p>15 doing that analysis is what is set forth in</p> <p>16 attachment F; is that correct?</p> <p>17 A. Not solely what is set forth in</p> <p>18 attachment F.</p> <p>19 Q. Okay. Please identify for me what else</p> <p>20 that opinion is based on with respect to factual</p> <p>21 information of T Mobile park that is not in</p> <p>22 attachment F?</p> <p>23 A. Okay. The item number thirty on page</p>	<p style="text-align: right;">Page 114</p> <p>1 thirty, the official web site for the Mariners,</p> <p>2 thirty-one, the information from Ticketmaster.</p> <p>3 Q. Wait a second, information from</p> <p>4 Ticketmaster is listed in attachment F, right?</p> <p>5 A. That is part of what -- that is part of</p> <p>6 the basis for what is in attachment F.</p> <p>7 Q. Okay. Let me put it another way, is there</p> <p>8 ticket pricing that you analyzed and that you've</p> <p>9 relied upon for purposes of your opinions here that</p> <p>10 reflects a day other than the May 28, 2019 game?</p> <p>11 A. Yes.</p> <p>12 Q. Where is that information?</p> <p>13 A. In my files.</p> <p>14 Q. And is it referenced here?</p> <p>15 A. It is not referenced here because it was</p> <p>16 additional information that didn't add anything to</p> <p>17 what we found here that was significant enough to</p> <p>18 report on. It just backed up what we found here.</p> <p>19 Q. I am just trying to figure out where in</p> <p>20 your opinion it says we did analysis of something</p> <p>21 other than that game?</p> <p>22 A. Item thirty and thirty-one.</p> <p>23 Q. Where does it say it in the opinion?</p>
<p style="text-align: right;">Page 115</p> <p>1 A. I don't know if it did. I would have to</p> <p>2 look at it. Which section of the opinion are you</p> <p>3 wanting me to check?</p> <p>4 Q. In section three beginning on page</p> <p>5 thirteen and continuing onto page seventeen.</p> <p>6 A. All right. If you read on page fourteen,</p> <p>7 sub A, it says, these tickets are available for sale</p> <p>8 on Ticketmaster for many games. It appears to be</p> <p>9 closed on low traffic dates, but no wheelchair</p> <p>10 seating opportunities were available for any game we</p> <p>11 could find. Before I wrote that I actually did what</p> <p>12 I said I was doing. So there is -- I am not saying</p> <p>13 that everything was in attachment F, I am saying</p> <p>14 that there are other things that we've looked at. So</p> <p>15 there we did that. All Star Club has tickets</p> <p>16 available on Ticketmaster but none are listed</p> <p>17 available for wheelchair users and their companions.</p> <p>18 Again, that was as a result of reviewing many, many</p> <p>19 days on Ticketmaster to see if I could find those. I</p> <p>20 didn't repeat that in that same kind of language</p> <p>21 that I had in A. In C, again, same thing, looked at</p> <p>22 dozens of games and could not find seats in the All</p> <p>23 Star Club or above the pen. For every game I</p>	<p style="text-align: right;">Page 116</p> <p>1 checked, when talking about Edwards Cantina, so I</p> <p>2 did not, in my report, attempt to list every game</p> <p>3 that I looked at on Ticketmaster -- although I have</p> <p>4 a lot of that information in my files, I didn't</p> <p>5 attempt to show that here.</p> <p>6 Q. Got it. So when I am looking at sub A,</p> <p>7 sub B, sub C, sub D on page fourteen, I don't know</p> <p>8 the date you are talking about, right?</p> <p>9 A. That is correct. Now, on page fifteen --</p> <p>10 on page fifteen you can see some dates.</p> <p>11 Q. I understand. I am clarifying, the ones</p> <p>12 A, B, C, D, there is no dates, right? We don't know</p> <p>13 what dates we are talking about?</p> <p>14 A. Well, D is what continues on fifteen that</p> <p>15 has dates.</p> <p>16 Q. Let me ask you this, in D you say so</p> <p>17 those positions clearly don't effectively create any</p> <p>18 opportunities for wheelchair users to go to</p> <p>19 Mariners' games if they want to get close to the</p> <p>20 field without planning months ahead, period, right?</p> <p>21 A. Yes.</p> <p>22 Q. Are you saying that there is an</p> <p>23 obligation to not sell those seats to people who</p>

James Terry

6/14/2019

Pages 117 to 120

Page 117	Page 118
<p>1 want them and therefore to preserve them?</p> <p>2 A. That is a long answer. That is a long</p> <p>3 answer. Justice has given lots and lots of guidance</p> <p>4 on ticket sales and how to protect ticket sales and</p> <p>5 make them available for wheelchair users. And that</p> <p>6 is a -- we don't have enough time today to go</p> <p>7 through that analysis.</p> <p>8 Q. But my point, you don't actually have any</p> <p>9 factual information about who has bought those seats</p> <p>10 you are referring to in sub section D, right?</p> <p>11 A. That is correct.</p> <p>12 Q. So you don't know, for example, if those</p> <p>13 seats were bought by somebody, a group of friends,</p> <p>14 whatever, who bought a whole slew of tickets; you</p> <p>15 don't know that?</p> <p>16 A. Like you said, I can't tell from</p> <p>17 Ticketmaster who bought a seat. I can guess all</p> <p>18 kinds of things, but I can't tell.</p> <p>19 Q. Right. And so if those seats were</p> <p>20 purchased by people using wheelchairs and wanting</p> <p>21 access to accessible seating, that is okay, right?</p> <p>22 A. It is.</p> <p>23 Q. And the fact that someone else can't buy</p>	<p>1 that seat doesn't mean that there is a problem, it</p> <p>2 means that someone else bought it first, right?</p> <p>3 A. That is correct. If that someone else is</p> <p>4 a wheelchair user, beyond that it is a whole bigger</p> <p>5 question.</p> <p>6 Q. Fair enough. Fair enough. We just don't</p> <p>7 know, right?</p> <p>8 A. I don't have information about who bought</p> <p>9 any tickets at the stadium.</p> <p>10 Q. Got it. Right. Okay. Let's talk about the</p> <p>11 vertical dispersal issue.</p> <p>12 A. Okay.</p> <p>13 Q. What is your opinion as to what vertical</p> <p>14 dispersal should be?</p> <p>15 A. What the regulations and standards say it</p> <p>16 should be.</p> <p>17 Q. Okay. Please tell me what that means.</p> <p>18 A. Okay. Vertical dispersal. We are talking</p> <p>19 about '91 standards, it was sufficient to provide</p> <p>20 comparable lines of sight and choice of ticket</p> <p>21 prices to those available to the general public.</p> <p>22 Under the 2010 standards it is distributed according</p> <p>23 to a very long series of sections and Technical</p>
Page 119	Page 120
<p>1 Assistance back up material that tells you how you</p> <p>2 disperse that in a stadium.</p> <p>3 Q. Okay. So in -- do you have an opinion as</p> <p>4 to which of those standards is applicable here?</p> <p>5 A. Where vertical dispersal was sufficient</p> <p>6 under the '91 standards to provide comparability</p> <p>7 where the elements were compliant, they would be</p> <p>8 safe harbored. They are not -- they weren't</p> <p>9 compliant with the line of sight requirements, so</p> <p>10 they failed that. So the element would have failed</p> <p>11 under the '91 standards because it didn't meet the</p> <p>12 line of sight over standing spectators requirement.</p> <p>13 The 2010 -- so if it didn't comply, and it still</p> <p>14 doesn't, if it didn't comply by March 15, 2012, then</p> <p>15 it is not fully safe harbored. So you would now look</p> <p>16 to the vertical dispersal of those elements</p> <p>17 according to the 2010 standards. Now if there were</p> <p>18 wheelchair seating positions, spaces, and their</p> <p>19 companions that complied with the '91 standards,</p> <p>20 then those would be safe harbored and could be</p> <p>21 factored out of the equation. So, for example, if</p> <p>22 the platforms in section 227 were compliant with</p> <p>23 the -- with the '91 standards for comparable</p>	<p>1 sightlines by March 15, 2012, then those would be</p> <p>2 safe harbored in and you would ignore that section</p> <p>3 for vertical dispersal. I have not -- I don't have</p> <p>4 enough information to be able to tell what is safe</p> <p>5 harbored to know how you would calculate that. So</p> <p>6 the opinion that I am going to give you is not based</p> <p>7 on having sufficient information to tell what would</p> <p>8 be safe harbored, so I what I would say is look at</p> <p>9 the 2010 standards, see how they handle the vertical</p> <p>10 dispersal and then see if there is evidence to</p> <p>11 indicate that any of the -- those requirements would</p> <p>12 have been met by the safe harbor by the '91</p> <p>13 standards.</p> <p>14 Q. So are you telling me you believe that it</p> <p>15 is the 2010 standards, unless there is something</p> <p>16 safe harbored and they are 1991?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And when you were looking at the</p> <p>19 analysis here, are you applying both standards or</p> <p>20 one?</p> <p>21 A. I am attempting to analyze it according</p> <p>22 to the 2010 standards and then say where it looks</p> <p>23 like there might have been safe harboring to say,</p>

James Terry

6/14/2019

Pages 121 to 124

<p style="text-align: right;">Page 121</p> <p>1 hey, I am not saying that I know what would have  2 been entitled a safe harbor. I can look at some  3 things and say, yeah, I don't think this is because  4 there is no evidence that it was ever compliant. But  5 there is some areas where I can't tell that. So I  6 tried to make it clear that I am open to the safe  7 harbor information, if that information is  8 available, but otherwise, it is analyzed based on  9 2010.</p> <p>10 Q. So just so I am clear, you are leaving  11 the door open for a 1991 safe harbor basis, but you  12 are saying your analysis here is based upon 2010?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. And what do you think should be  15 done with respect to the vertical distribution of  16 dispersal?</p> <p>17 A. Wheelchair spaces should be provided  18 where they are required.</p> <p>19 Q. Where are they required here, do you have  20 a proposed remedy?</p> <p>21 A. I don't. Wasn't given enough time to look  22 for proposed remedies.</p> <p>23 Q. You don't have an opinion as to proposed</p>	<p style="text-align: right;">Page 122</p> <p>1 remedy, right?</p> <p>2 A. I am sorry, I don't have what?</p> <p>3 Q. An opinion as to any proposed remedy?</p> <p>4 A. I have opinions.</p> <p>5 Q. Have you done a feasibility study?</p> <p>6 A. I have not.</p> <p>7 Q. Okay. Do you know anything about the  8 engineering of the stadium with respect to vomitory  9 locations?</p> <p>10 A. Engineering of the locations?</p> <p>11 Q. Do you know where the vomitories are?</p> <p>12 A. I can see those in the photographs, I can  13 see them in the drawings that I have been given.</p> <p>14 Q. Do you know where the vomitories are, if  15 any, in the 100 level?</p> <p>16 A. Yes. We have that information.</p> <p>17 Q. Where are they?</p> <p>18 A. They come out in the -- into the area  19 behind the home plate.</p> <p>20 Q. And do you know if those accessible --  21 those vomitory pathways are accessible?</p> <p>22 A. I do not.</p> <p>23 Q. Have you ever testified in a case</p>
<p style="text-align: right;">Page 123</p> <p>1 regarding vertical distribution?</p> <p>2 A. Yes.</p> <p>3 Q. Could you identify the case?</p> <p>4 A. Sure, it is more than one.</p> <p>5 Q. Just even one would be great.</p> <p>6 A. Coors Field.</p> <p>7 Q. Any other?</p> <p>8 A. I believe the MCI arena included vertical  9 dispersal and horizontal dispersal in it. Yankee  10 stadium did.</p> <p>11 Q. How about the Rose Garden case?</p> <p>12 A. You know, it has been a long time, I  13 don't remember if dispersal was in there. My guess  14 would be it was because we tried to look at a broad  15 range of issues in that one, but I can't testify  16 that I know that for sure. I can go back and pull my  17 file.</p> <p>18 Q. No, I am just really wondering if you  19 know. I am not asking you to guess.</p> <p>20 A. Yeah, I don't remember if it was in there  21 or not.</p> <p>22 Q. So as I understand it, I want to close  23 this out, your opinion is that there is a lack of</p>	<p style="text-align: right;">Page 124</p> <p>1 vertical dispersal under the 2010 standards, leaving  2 the door open for possible safe harbor, and you  3 don't have an opinion as to how that would be  4 remedied?</p> <p>5 A. No, I didn't say that.</p> <p>6 Q. Okay. Tell me what is wrong.</p> <p>7 A. The assuming because, again, based on the  8 fact that there were wheelchair positions designed  9 behind home plate to start with that there is an  10 accessible route, at least one, to get to that area,  11 the number of wheelchair positions in that area  12 could be increased beyond what is available now.  13 And those spaces could be used to meet the  14 obligations described in the Department of Justice's  15 preamble analysis of what their -- I say preamble  16 analysis, their analysis of the -- what they  17 intended with ticket price dispersals in the 2010  18 regulations. That those -- that that number could  19 be increased to improve dispersal there. Dispersal  20 could be improved by adding wheelchair positions in  21 the other places where they should be and where I  22 have no evidence that they exist. And those would --  23 those would improve it. I have not had a chance to</p>

James Terry

6/14/2019

Pages 125 to 128

<p style="text-align: right;">Page 125</p> <p>1 develop detailed opinions on how the other dispersal</p> <p>2 things can be handled, just because of lack of time</p> <p>3 available in the field.</p> <p>4 Q. Let's be specific, okay?</p> <p>5 A. All right.</p> <p>6 Q. Let's look at Exhibit 4.</p> <p>7 A. Okay.</p> <p>8 Q. Where do you believe there should be more</p> <p>9 accessible seating put in?</p> <p>10 A. Closer to the field, between the foul</p> <p>11 poles on the --</p> <p>12 Q. Where?</p> <p>13 A. Where?</p> <p>14 Q. Yes. I mean, you've got a map in front</p> <p>15 of you, I am trying to figure out what you are</p> <p>16 recommending.</p> <p>17 A. Additional seats between the dug-outs.</p> <p>18 We know that there is an accessible route that leads</p> <p>19 to that. Additional seats in that area, wheelchair</p> <p>20 seats, would improve vertical access for the ten</p> <p>21 thousand plus people that are between the foul poles</p> <p>22 on the 41st row.</p> <p>23 Q. Other than taking out seats in sections</p>	<p style="text-align: right;">Page 126</p> <p>1 thirty-five, thirty-three, whatever they are, and</p> <p>2 adding in more accessible seats, do you have any</p> <p>3 other recommendations with respect to level 100?</p> <p>4 A. I have not had a chance to study it and I</p> <p>5 do not have specific opinions or solutions until I</p> <p>6 have a chance to study it.</p> <p>7 Q. Okay. Do you have any recommendation with</p> <p>8 respect to level 200?</p> <p>9 A. In terms of vertical dispersal in 200, I</p> <p>10 am not as concerned about vertical dispersal in 200</p> <p>11 because they are such shorter sections.</p> <p>12 Q. Okay. So 200 you believe is okay?</p> <p>13 A. Let me -- hang on just a second.</p> <p>14 Q. Yes.</p> <p>15 A. Yeah, I don't have a problem with the 200</p> <p>16 section just because it is so short.</p> <p>17 Q. Okay. How about 300?</p> <p>18 A. 300 meets the standards for vertical</p> <p>19 dispersal. For vertical dispersal only. I mean,</p> <p>20 they fail other parts of the standard, but vertical</p> <p>21 dispersal, they are close enough at this point where</p> <p>22 I wouldn't spend a lot of effort working on them.</p> <p>23 Q. Got it. And just so I am clear here, the</p>
<p style="text-align: right;">Page 127</p> <p>1 level 300 you believe the vertical dispersal is</p> <p>2 okay, the same is true for level 200, it is level</p> <p>3 100 that you are articulating is the problem?</p> <p>4 A. Level 100 is where the biggest problems</p> <p>5 are.</p> <p>6 Q. Right. I understand. I am really just</p> <p>7 trying to get focused so I can ask some questions</p> <p>8 about that.</p> <p>9 A. Sure.</p> <p>10 Q. Don't let me put words in your mouth,</p> <p>11 your view is level 200 and level 300 are okay with</p> <p>12 respect to vertical dispersal, but level 100 you</p> <p>13 think is not?</p> <p>14 A. Just making sure I am not forgetting</p> <p>15 anything here.</p> <p>16 Q. No, that is fine. Please take your time.</p> <p>17 A. Yeah, you know, I would have to look at</p> <p>18 ticket pricing to see about the 200 level and the</p> <p>19 300 level.</p> <p>20 Q. We can put that aside for a moment.</p> <p>21 Setting aside the issue of pricing, the vertical</p> <p>22 dispersal with respect to location for 300 and 200</p> <p>23 you are okay with, setting aside pricing?</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So with respect to location, your</p> <p>3 complaint is about level 100?</p> <p>4 A. That is the primary complaint, yes.</p> <p>5 Q. Is there some other complaint?</p> <p>6 A. Well, horizontal dispersal we talked</p> <p>7 about a little earlier.</p> <p>8 Q. I am actually trying to keep ourselves</p> <p>9 focused on vertical dispersal.</p> <p>10 A. Okay. All right.</p> <p>11 Q. Is there something, other than level 100</p> <p>12 vertical dispersal, that you have a complaint about?</p> <p>13 A. No.</p> <p>14 Q. Okay. So then if we look at level 100, in</p> <p>15 terms of trying to figure out if there is a remedy,</p> <p>16 your view is add more seats in thirty-five, section</p> <p>17 thirty-five, section thirty-three and so on, right?</p> <p>18 A. If you are looking for an opinion that is</p> <p>19 almost certain about something that could be done</p> <p>20 but without the opportunity to look at other things</p> <p>21 that could be done, that one looks to me to be an</p> <p>22 easy fix. I am not ruling out other solutions, that</p> <p>23 given an opportunity to go there and look at it,</p>



James Terry

6/14/2019

Pages 129 to 132

Page 129

1 that other solutions couldn't be come up with as  
2 well, I just don't --

3 Q. I am not --

4 A. They are not obvious.

5 Q. I am not trying to -- I am just saying as  
6 you sit here today, there is nothing else that you  
7 have to say on that topic?

8 A. I don't have an opinion about something  
9 that appears to be a great solution right now.

10 Q. That appears to be what?

11 A. A great solution right now.

12 Q. We have been going more than an hour, why  
13 don't we take a three minute break and let you go to  
14 the restroom or get a glass of water, whatever.

15 (Short break.)

16 Q. Mr. Terry, thank you for your willingness  
17 to do this on a Friday afternoon. I know it is not a  
18 lot of fun.

19 A. It doesn't bother me at all.

20 Q. I appreciate it. I want to close out a  
21 couple of things. So when we were talking about  
22 vertical distribution, I understand that your  
23 analysis is kind of section by section within the

Page 130

1 stadium as opposed to viewing the stadium as a  
2 whole; is that right?

3 A. That probably is a little over  
4 simplification. The rules regarding vertical  
5 dispersal under the 2010 standards are -- they are  
6 complicated because they were written to deal with a  
7 lot of different types of assembly spaces,  
8 everything from, you know, a small lecture room to a  
9 theater to a cinema theater to a stadium, and so my  
10 analysis of this is kind of a hybrid analysis of  
11 those details, my opinions about this. And the --  
12 and what was required in '91. And so it is kind of  
13 a hybrid analysis. It is it not necessarily a  
14 section by section, because the fact that one  
15 section has wheelchair seats in it and the other one  
16 doesn't, doesn't mean that the one that doesn't have  
17 them failed because the count may not have been  
18 required, horizontal dispersal didn't require  
19 something, so it is a hybrid kind of analysis.

20 Q. Is it fair to say that your analysis with  
21 respect to T Mobile park is section by section? In  
22 other words, you are saying that level 100 is a  
23 problem, in your view, but that level 200 is not and

Page 131

1 level 300 is not?

2 A. Are you calling the level a section?  
3 Because I call the sections the ones that have  
4 separate numbers to them. So I would think 321 and  
5 322 are different sections.

6 Q. I agree. And so is your analysis --

7 A. Actually there is no 322, sorry.

8 Q. Well, is your analysis, then, that the  
9 level 100 is viewed discretely from level 200 and  
10 level 300?

11 A. Yes, under the 2010 standards, you are  
12 required to provide vertical dispersal to all levels  
13 that are served by an accessible route.

14 Q. How about the '91 standards?

15 A. '91 standards were performance standards.  
16 They didn't give you nearly as much guidance on how  
17 to do. You just had to provide lines of sight that  
18 were comparable and you had to provide ticket  
19 pricing options that were comparable. And so that  
20 gave you a lot more latitude in how you design the  
21 stadium to achieve that performance requirement.

22 Q. There is nothing in the '91 standard that  
23 talks about a level by level or a section by section

Page 132

1 analysis, right?

2 A. I don't recall one.

3 Q. Okay. In the motion that the plaintiff's  
4 filed, and you can look at Exhibit 3, they say this,  
5 in order to become even arguably compliant with  
6 either the 1991 or the 2010 ADA standards, T Mobile  
7 park must offer a dramatically increased number of  
8 wheelchair accessible seats closer to the playing  
9 field, for instance by increasing the proportion of  
10 wheelchair accessible seating within the first  
11 fifteen rows of the field from 0.115 percent to  
12 16percent. Do you agree that 16 percent of the  
13 seating within the first fifteen rows of the field  
14 should be accessible seating?

15 A. I have never done that calculation, so I  
16 can't say whether I agree with it or not.

17 Q. Do you believe that that is required by  
18 the 1991 or the 2010 ADA standards for T Mobile  
19 park?

20 A. That sounds like it is probably right for  
21 the 2010 standards for vertical dispersal for new  
22 construction. And so --

23 Q. Do you believe that the 2010 ADA



James Terry

6/14/2019

Pages 133 to 136

<p style="text-align: right;">Page 133</p> <p>1 standards, if applicable, would require 16 percent</p> <p>2 of the seating in the first fifteen rows to be</p> <p>3 accessible?</p> <p>4 A. I don't have an opinion about that</p> <p>5 specific number.</p> <p>6 Q. You just don't know?</p> <p>7 MR. REYNOLDSON: Object to the form.</p> <p>8 A. I don't have an opinion, I haven't</p> <p>9 studied it.</p> <p>10 Q. Fair enough. I want to talk a little bit</p> <p>11 about season ticket availability.</p> <p>12 A. Okay.</p> <p>13 Q. You have a chart. I believe it is</p> <p>14 attachment I.</p> <p>15 A. Yes.</p> <p>16 Q. Your opinion at section E on page sixteen</p> <p>17 to the top of page seventeen talks about season</p> <p>18 tickets.</p> <p>19 A. All right. I am on page seventeen.</p> <p>20 Q. Sixteen -- starts at the bottom of</p> <p>21 sixteen and continues to the top of seventeen.</p> <p>22 A. Yes, all right.</p> <p>23 Q. Okay. Is there an opinion you have about</p>	<p style="text-align: right;">Page 134</p> <p>1 the availability of accessible seats in season</p> <p>2 tickets?</p> <p>3 MR. REYNOLDSON: Can you clarify the</p> <p>4 question?</p> <p>5 A. Yeah, is there an opinion -- you are</p> <p>6 asking me if I have additional opinions beyond what</p> <p>7 are in the report?</p> <p>8 Q. I don't know, actually, what the report</p> <p>9 says exactly and I am trying to understand it. Are</p> <p>10 you making an opinion that there is something not</p> <p>11 compliant with the ADA, whether it is the 1991</p> <p>12 standards or 2010 standards, with respect to the</p> <p>13 season ticket availability of accessible seating?</p> <p>14 A. Yes, what I am indicating is I don't have</p> <p>15 enough information yet to be able to form a defined</p> <p>16 opinion, but the indicators are because of the fact</p> <p>17 that wheelchair seats are just not available for</p> <p>18 purchase while all the other -- you know, there are</p> <p>19 lots and lots of season tickets available, but very</p> <p>20 few to wheelchair users, comparatively speaking,</p> <p>21 very few to wheelchair users. That is an indicator</p> <p>22 that there is something wrong with either the number</p> <p>23 of seats that are made available to wheelchair users</p>
<p style="text-align: right;">Page 135</p> <p>1 or that are -- that are being bought maybe by non</p> <p>2 wheelchair users or something -- I am telling you</p> <p>3 that there are indicators here that say that</p> <p>4 something is wrong. And I don't have enough</p> <p>5 information about it to be able to tell definitively</p> <p>6 what is wrong.</p> <p>7 Q. Or even if there is anything wrong, you</p> <p>8 just don't know?</p> <p>9 MR. REYNOLDSON: Objection. Object to the</p> <p>10 form.</p> <p>11 A. Yeah, I have -- I just told you what I</p> <p>12 know. What I know is what I see and it is a red</p> <p>13 flag.</p> <p>14 Q. What I understand you to be doing, tell</p> <p>15 me if I am wrong, is that you are seeing something</p> <p>16 and you are making a inference, you just don't know?</p> <p>17 MR. REYNOLDSON: Object to the form.</p> <p>18 A. I am looking for the opportunities</p> <p>19 available to wheelchair users when compared to the</p> <p>20 opportunities available to other people, and I am</p> <p>21 raising a flag to say, this looks funny, somebody</p> <p>22 needs to look at this.</p> <p>23 Q. Okay. But you have not looked at it to</p>	<p style="text-align: right;">Page 136</p> <p>1 date?</p> <p>2 A. Not in anymore detail than what I have</p> <p>3 explained and what shows up in attachment I.</p> <p>4 Q. Right. And so in attachment I you are</p> <p>5 providing information regarding a -- some searching</p> <p>6 you did on -- as of April 28, 2019; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Did you look at the ticket availability</p> <p>9 for any dates -- sorry, on any other dates than</p> <p>10 April 28th?</p> <p>11 A. No.</p> <p>12 Q. So do you know when ticket -- excuse me,</p> <p>13 do you know when season tickets go on sale?</p> <p>14 A. I do not.</p> <p>15 Q. They go on sale in November. So you don't</p> <p>16 know what the availability was here for any of these</p> <p>17 seats in November, do you?</p> <p>18 A. I do not.</p> <p>19 Q. Or January or February or March, right?</p> <p>20 A. I have testified that I know only what</p> <p>21 was available on April 28th.</p> <p>22 Q. Got it. And you also don't know if, for</p> <p>23 example, on May 1, if you had done the same search</p>

**James Terry****6/14/2019**

Pages 137 to 140

Page 137	Page 138
<p>1 there may have been more inventory put in those</p> <p>2 sections, right?</p> <p>3 A. I have already testified I only know what</p> <p>4 was there on April 28th.</p> <p>5 Q. Got it. So the indicator, the red flag</p> <p>6 that you referred to, is only based upon searching</p> <p>7 you did on April 28th; is that right?</p> <p>8 A. That is correct.</p> <p>9 Q. In your report, in section four, you are</p> <p>10 talking about the new seats in the Diamond Club</p> <p>11 area?</p> <p>12 A. Yes.</p> <p>13 Q. It is on page seventeen onto the top of</p> <p>14 eighteen.</p> <p>15 A. Yes.</p> <p>16 Q. And the question -- I guess the question</p> <p>17 you are addressing is whether or not those seats and</p> <p>18 the routes leading to them are compliant with the</p> <p>19 2010 ADA standards, that is the question you are</p> <p>20 asking, right?</p> <p>21 A. That is one of questions. Oh, yes, are</p> <p>22 the seats and the routes accessible, that is all</p> <p>23 that is in that one.</p>	<p>1 Q. Yeah, I am not trying to mislead you, I</p> <p>2 am trying to get you --</p> <p>3 A. Yes, sure.</p> <p>4 Q. So the answer is you don't know?</p> <p>5 A. I am sorry?</p> <p>6 Q. The answer is you don't know, is that</p> <p>7 right?</p> <p>8 A. I don't know what?</p> <p>9 Q. You don't know whether they comply or</p> <p>10 not, you don't have an opinion?</p> <p>11 A. I don't have enough information to know</p> <p>12 definitively whether they comply or not. Again,</p> <p>13 there are red flags that I pointed out in my report,</p> <p>14 there are red flags that came from the photographs</p> <p>15 of those seats and from the drawings of those seats</p> <p>16 that indicate that there may be problems. I don't</p> <p>17 know specifically, personally, that those problems</p> <p>18 are there, but they are indicated as being problems</p> <p>19 in the photographs in the drawings.</p> <p>20 Q. Fair enough. And again, you are saying</p> <p>21 that there are indicators that come to your</p> <p>22 attention, but you don't have enough information to</p> <p>23 render an informed opinion; is that right?</p>
Page 139	Page 140
<p>1 A. No, I didn't say it is not an informed</p> <p>2 opinion. I said it is not a definitive opinion. I</p> <p>3 have not measured them personally myself in the</p> <p>4 field to know whether they were built like the</p> <p>5 drawings show them, or like the photographs show</p> <p>6 them, or if they have been modified since then, or</p> <p>7 whether they were -- the drawings were, you know,</p> <p>8 modified later. All I know is what I have seen and</p> <p>9 what I have seen indicates that there is the</p> <p>10 potential for some problems there. Dimensions are</p> <p>11 closer than I would have designed them if I had done</p> <p>12 it myself.</p> <p>13 Q. But again --</p> <p>14 A. So I can't tell.</p> <p>15 Q. -- you haven't measured anything, right?</p> <p>16 A. I have not measured these, no.</p> <p>17 Q. You have not been there, you have not sat</p> <p>18 in them?</p> <p>19 A. No.</p> <p>20 Q. And you haven't done anything to see what</p> <p>21 they are doing in the operation, right?</p> <p>22 A. No, I have testified I haven't been to</p> <p>23 the field this year, since that visit.</p>	<p>1 Q. Okay. So as we sit here, you don't have</p> <p>2 the ability to render a firm opinion because you</p> <p>3 don't have the information, that is all, right?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. Number five of your opinion here</p> <p>6 asks the question about whether there is, quote,</p> <p>7 public evidence that the new seating is available;</p> <p>8 is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And the answer is you did not know based</p> <p>11 upon whatever you did at the time, right?</p> <p>12 A. I wouldn't have phrased it that way.</p> <p>13 Q. Well, I mean, the answer is you don't</p> <p>14 know, right?</p> <p>15 A. The answer is that I could not -- I mean</p> <p>16 the question was, is there public evidence, and the</p> <p>17 answer is no, there is no public evidence that I</p> <p>18 could find.</p> <p>19 Q. That you could find for purposes -- so if</p> <p>20 I said to you, go on Ticketmaster tonight and you</p> <p>21 can find those seats available, you wouldn't have</p> <p>22 any reason to rebut that, would you?</p> <p>23 A. I would be totally surprised. I looked at</p>

**James Terry****6/14/2019**

Pages 141 to 144

Page 141	Page 142
<p>1 them this week and I couldn't find them.</p> <p>2 Q. So you haven't read Malcolm Rogel's</p> <p>3 declaration, have you, or looked at the Exhibit</p> <p>4 which shows the seats available?</p> <p>5 A. I have not. I've looked at Ticketmaster</p> <p>6 and that is what is publicly available.</p> <p>7 Q. Right. And in Mr. Rogel's declaration</p> <p>8 attached is an Exhibit which is a screen shot of</p> <p>9 Ticketmaster purchasing those seats, you have not</p> <p>10 seen that, have you?</p> <p>11 A. I have not.</p> <p>12 Q. I want to ask you about number six, this</p> <p>13 says the dimensions of seating placement on the 300</p> <p>14 level.</p> <p>15 A. Yes.</p> <p>16 Q. The bottom of eighteen. And I see you</p> <p>17 make an analysis about the dimensions, sizing and</p> <p>18 that what you believe or think to be the problem</p> <p>19 which is the placement of structural supports; is</p> <p>20 that right?</p> <p>21 A. It is placement of the structural</p> <p>22 supports for the guard that goes across the front of</p> <p>23 the platform, yes.</p>	<p>1 Q. Right. And I think you are correct, you</p> <p>2 are saying it is mounted on the floor as opposed to</p> <p>3 the front of the platform; is that right?</p> <p>4 A. It is mounted on the top rather than the</p> <p>5 front of the platform, yes.</p> <p>6 Q. Fair enough. Fair enough. And is that</p> <p>7 true for all seats in the 300 level or certain ones?</p> <p>8 A. The ones that I saw, it looked like a</p> <p>9 standard detail.</p> <p>10 Q. Do you know?</p> <p>11 A. I did not have time to look at every</p> <p>12 section and document that kind of specificity. No, I</p> <p>13 don't know that every section is that way.</p> <p>14 Q. Got it. Do you know which ones you looked</p> <p>15 at?</p> <p>16 A. I looked at a whole series of them from</p> <p>17 section 306 back. We walked all the way -- I think</p> <p>18 we walked all the way around the section, I can't</p> <p>19 recall for sure that we did them all, but we walked</p> <p>20 all the way around them and said, hey, are there</p> <p>21 other things that we need to be looking at here,</p> <p>22 but, again, we only had six and a half hours, so</p> <p>23 that was not a real high priority. Once we saw what</p>
Page 143	Page 144
<p>1 was causing the complaint --</p> <p>2 Q. Do you know the numbers? If you know the</p> <p>3 numbers, tell me, if you don't know, tell me you</p> <p>4 don't know.</p> <p>5 A. I don't know the specific numbers.</p> <p>6 Q. Okay. That is fine.</p> <p>7 A. As I sit here.</p> <p>8 Q. That is fine. And they are not listed in</p> <p>9 your report, are they?</p> <p>10 A. I don't recall.</p> <p>11 Q. I didn't see them. That is why I am</p> <p>12 asking. If you think they are, just tell me where.</p> <p>13 A. I don't think -- I don't think they are</p> <p>14 listed in the report. It was a typical condition and</p> <p>15 so I mean, I have photographs of them that have</p> <p>16 section numbers in the photographs, but I don't have</p> <p>17 those with me.</p> <p>18 Q. Okay. What I am getting at, there is</p> <p>19 nothing in your report that says which section,</p> <p>20 right?</p> <p>21 A. No, I don't think so.</p> <p>22 Q. Okay. You also have this thing here,</p> <p>23 number seven, about companions.</p>	<p>1 A. Yes.</p> <p>2 Q. As I understand it, you don't actually</p> <p>3 know -- have an opinion about the companion seats,</p> <p>4 you are just not sure, you don't have the</p> <p>5 information; is that right?</p> <p>6 A. There were a few companion seats that I</p> <p>7 saw in the stadium, kind of surprised me to see a</p> <p>8 few fixed companion seats around, but the vast</p> <p>9 majority of the companion seats were not in place</p> <p>10 and so I don't know for sure what kind of companion</p> <p>11 seats are in use this season.</p> <p>12 Q. Fair enough. You do not know and you</p> <p>13 don't have an opinion about whether the companion</p> <p>14 seats are or are not complaint in any which way?</p> <p>15 A. I do not have an opinion about companion</p> <p>16 seats in use this season at the stadium, because I</p> <p>17 haven't seen them.</p> <p>18 Q. Fair enough. And similarly, you don't</p> <p>19 have an opinion about --</p> <p>20 A. About the what?</p> <p>21 Q. You don't have an opinion with respect to</p> <p>22 the compliance or non compliance with companion</p> <p>23 seats as used last season?</p>

James Terry

6/14/2019

Pages 145 to 148

<p style="text-align: right;">Page 145</p> <p>1 A. I believe that there were -- some of the  2 companion seats visible in the photographs that  3 Brenda Basher took, and I would have to go back and  4 look at those. But, again, it is a question that I  5 would have to go back and look and see what all was  6 in there for those. I did ask somebody and I can't  7 recall when I asked that and so I felt like it was  8 something that should go in here.</p> <p>9 Q. Let me ask you this, I don't see an  10 opinion one way or the other in this sub section  11 seven on nineteen and twenty of your report, am I  12 missing something?</p> <p>13 A. Okay. Maybe the question here is an  14 opinion. When I say, I understand that they are not  15 all comparable to the other seats in the nearby  16 area, are you disqualifying an opinion based on an  17 understanding? If this understanding is correct,  18 then my opinion is that it is in violation, that is  19 what I am saying. Do I have specifics about what is  20 actually in place right now? No. So I don't have an  21 opinion about what is actually in place right now. I  22 have an opinion that says that if, as I understand,  23 they don't meet the obligations defined in my report</p>	<p style="text-align: right;">Page 146</p> <p>1 and defined by the standards and the Technical  2 Assistance Materials, then my opinion is that they  3 are out of compliance.</p> <p>4 Q. And if the seating does comply with the  5 standards, then they are in compliance, right?</p> <p>6 A. Provided they are operating correctly and  7 all the other things, then, yes, they would be  8 compliant.</p> <p>9 Q. Okay. Your report does not say they lack  10 compliance in 2019; does it?</p> <p>11 A. It does not.</p> <p>12 Q. It does not say that there was a lack of  13 compliance in 2018; does it?</p> <p>14 A. It says that my understanding is that  15 they did not comply. From the facts that I have been  16 given, that I understand they do not comply, and  17 here are the reasons that I am told that they don't  18 comply. So that would be my opinion. If my  19 understanding of the facts -- again, I have spent  20 six and a half hours in a stadium, I was not allowed  21 to be there otherwise, and so based on what I could  22 see and what I understand, that is a problem. And  23 that is my opinion.</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. So, Mr. Terry, wait a second, you know,  2 and you said here, when you visited most companion  3 seats were not in place, right?</p> <p>4 A. That is correct.</p> <p>5 Q. So you could have been at the stadium for  6 three days and you wouldn't have seen any, right?</p> <p>7 A. During that time, if it continued  8 snowing, I probably wouldn't have seen anything.</p> <p>9 Q. Right. Okay. Now secondly, you don't have  10 an opinion stated here about 2018, you have some  11 understanding about I don't know what, so let's talk  12 about that. What is your understanding based on?</p> <p>13 A. Is that the seats were not comparable for  14 wheelchair users companions --</p> <p>15 Q. No, what is your understanding, what is  16 the information that is the premise and basis of  17 your understanding?</p> <p>18 A. My understanding was that the companion  19 seats did not -- were not comparable to the seats  20 provided for other spectators in the same area, that  21 they lacked -- either in some areas they lacked cup  22 holders, in some areas they lacked armrests, in some  23 areas they lacked padding where there was padding</p>	<p style="text-align: right;">Page 148</p> <p>1 available to other people, that the kinds of things  2 that would make them comparable were not provided.</p> <p>3 Q. Okay. I am going to back up here, so  4 number one, you do not say anywhere here that the  5 comparability issues are cup holders, armrests or  6 padding, why is that?</p> <p>7 A. Why do you say I don't say that?</p> <p>8 Q. Well, you don't say that your  9 understanding is that there are non comparable seats  10 because they lack X, Y or Z, you don't tell us that,  11 right?</p> <p>12 A. All right. So you are saying that my  13 quoting --</p> <p>14 Q. My question is just a yes or no?</p> <p>15 A. Okay. I am reading my report. Amenities  16 include but are not limited to cup holders, armrests  17 and storage pockets. Later, the next sentence, I  18 don't say they are missing armrests, cup holders and  19 storage pockets, I don't repeat what was in the  20 standards, I just said as a matter of grammatical,  21 you know, the way I am doing it is I understand they  22 are not all comparable. Two sentences later I tell  23 you that I understand this is not the case. I could</p>

**James Terry****6/14/2019**

Pages 149 to 152

<p style="text-align: right;">Page 149</p> <p>1 have repeated that list. I didn't. But I could have.</p> <p>2 Q. Here is the deal, if, for example, the</p> <p>3 complaint was that these seats were not comparable</p> <p>4 because they lacked cup holders then I would expect</p> <p>5 you, even if you quoted the entire regulation, you</p> <p>6 would then say here the seats were not comparable in</p> <p>7 the 2018 season because they lacked cup holders or</p> <p>8 whatever, but you are not telling us that. So now</p> <p>9 what I am hearing you say is that your, quote</p> <p>10 unquote, understanding is that there are in some</p> <p>11 places cup holder issues, other places armrest</p> <p>12 issues, other places padding issues, but you don't</p> <p>13 actually have personal knowledge of any of those?</p> <p>14 A. No more personal knowledge than what I</p> <p>15 have seen in the photographs and been told.</p> <p>16 Q. Okay. So when you are understanding is</p> <p>17 based on being told, who told you this?</p> <p>18 A. Brenda Basher and my client's.</p> <p>19 Q. Your client's --</p> <p>20 A. People who have been there to the stadium</p> <p>21 more than any of the rest of us.</p> <p>22 Q. The plaintiff's in this case?</p> <p>23 A. Plaintiff's attorneys in this case and I</p>	<p style="text-align: right;">Page 150</p> <p>1 don't think I have talked to the plaintiff's about</p> <p>2 this.</p> <p>3 Q. All right. So your understanding is based</p> <p>4 upon the communication Mr. Reynoldson had with you?</p> <p>5 A. Partially.</p> <p>6 Q. And the communications Mr. Conner had</p> <p>7 with you?</p> <p>8 A. Partially.</p> <p>9 Q. Got it. And what else?</p> <p>10 A. Conversations with Brenda Basher, what I</p> <p>11 saw in photographs.</p> <p>12 Q. Who is Brenda Basher?</p> <p>13 A. The surveyor who went there during the</p> <p>14 game in 2018.</p> <p>15 Q. I don't see that -- is that and Brenda</p> <p>16 Cummings the same person?</p> <p>17 A. Oh, yes, sorry. Her maiden name was</p> <p>18 Basher or her prior name was Basher. It is Cummings</p> <p>19 now, sorry.</p> <p>20 Q. So Ms. Basher-Cummings, she didn't</p> <p>21 actually do an analysis of a companion seat, did</p> <p>22 she?</p> <p>23 A. I did not do an analysis of it.</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. She didn't in fact -- she did not</p> <p>2 document whether or not they were compliant or not,</p> <p>3 did she?</p> <p>4 A. She has photographs that I looked at, I</p> <p>5 would have to look back through those photographs to</p> <p>6 see if part of what I was basing this opinion was on</p> <p>7 her photographs.</p> <p>8 Q. But you don't know today?</p> <p>9 A. Today I can't tell you what the specifics</p> <p>10 were.</p> <p>11 Q. Got it.</p> <p>12 A. I --</p> <p>13 Q. So apart from Mr. Reynoldson's input and</p> <p>14 Mr. Conner's input and potentially looking at the</p> <p>15 pictures that Brenda Basher took, that covers the</p> <p>16 basis of your understanding as a factual matter?</p> <p>17 A. Not completely. Like I said, there were</p> <p>18 some companion seats in place when I was there.</p> <p>19 Q. Okay. Were the companion seats in place</p> <p>20 when you were there non compliant, because it</p> <p>21 doesn't say that and I want to know if they were?</p> <p>22 A. You know, I need to look back at any</p> <p>23 photograph of the companion seat in the 200 level,</p>	<p style="text-align: right;">Page 152</p> <p>1 the fixed companion seat that was there. My</p> <p>2 recollection is that it was non compliant.</p> <p>3 Q. It doesn't say that in this opinion, does</p> <p>4 it?</p> <p>5 A. No. Now, I understand would not be</p> <p>6 contradicted by the fact that I saw something that</p> <p>7 was compliant or non compliant. So I used a more</p> <p>8 general term than I would have if I had stopped and</p> <p>9 said, okay, that seat was not, I -- I didn't do</p> <p>10 that.</p> <p>11 Q. Right. You actually, as you sit here</p> <p>12 today, do not have personal knowledge about this,</p> <p>13 you are relying upon input from the attorney's and</p> <p>14 maybe even some pictures you saw and some</p> <p>15 recollection you have, but maybe you didn't measure</p> <p>16 it, right?</p> <p>17 A. I do not have personal recollection of</p> <p>18 that particular seat to tell you specifically what</p> <p>19 it failed. My recollection is that it was non</p> <p>20 compliant, but I don't have that in front of me so I</p> <p>21 can't tell you specifically what was wrong with it,</p> <p>22 otherwise I am relying on photographs, discussions</p> <p>23 with other people.</p>

**James Terry****6/14/2019**

Pages 153 to 156

Page 153	Page 154
<p>1 Q. Right. And to the extent that you</p> <p>2 believe, sitting here today, maybe this 200 level</p> <p>3 seat was non compliant, you did not say that in your</p> <p>4 opinion, did you?</p> <p>5 A. I did not put it in my report.</p> <p>6 Q. Got it. Let's talk about the large</p> <p>7 scoreboard which is section eight of your report on</p> <p>8 page twenty.</p> <p>9 A. I am sorry, which page are we on now?</p> <p>10 Q. On page twenty.</p> <p>11 A. Okay.</p> <p>12 Q. Section number eight.</p> <p>13 A. Yes.</p> <p>14 Q. So do you have an opinion -- are you</p> <p>15 giving an opinion that there is a violation of the</p> <p>16 ADA with respect to the large scoreboard?</p> <p>17 A. Yes.</p> <p>18 Q. And that is because you are basing it</p> <p>19 upon the idea that there is some sort of lack of</p> <p>20 effective communication; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And so when you were there, you</p> <p>23 didn't actually see any scoreboard in operation,</p>	<p>1 right?</p> <p>2 A. I did not.</p> <p>3 Q. And in fact, you didn't see the large</p> <p>4 scoreboard in operation, did you?</p> <p>5 A. I did not.</p> <p>6 Q. So you didn't see whether the television</p> <p>7 monitors were in action, you didn't see those</p> <p>8 either, right?</p> <p>9 A. That is correct.</p> <p>10 Q. Got it. And you didn't hear the PA with</p> <p>11 respect to any kind of game commentary, right?</p> <p>12 A. That is correct.</p> <p>13 Q. And you didn't look at any apps to show</p> <p>14 other information that was being provided, right?</p> <p>15 A. That is correct.</p> <p>16 Q. So you don't -- when you rendered the</p> <p>17 opinion, you are not taking into account any of</p> <p>18 those things, right?</p> <p>19 A. No, not true.</p> <p>20 Q. Oh, really? I am trying to understand,</p> <p>21 because you don't mention how information is</p> <p>22 communicated other ways and other means, other</p> <p>23 venues?</p>
Page 155	Page 156
<p>1 A. That is correct.</p> <p>2 Q. So what is it that you believe -- what is</p> <p>3 the remedy that you believe should be occurring</p> <p>4 here?</p> <p>5 A. The Mariners should do an analysis of the</p> <p>6 information that is being provided through the</p> <p>7 scoreboard that is disproportionally blocked because</p> <p>8 of the location of the wheelchair positions, and</p> <p>9 they should analyze and make sure that that same</p> <p>10 information is available in a similar kind of way to</p> <p>11 people who can find no better place to sit and that</p> <p>12 is where -- that is where they have to sit, so that</p> <p>13 everybody is communicated effectively to, the same</p> <p>14 kinds of information that are being provided to</p> <p>15 everybody else.</p> <p>16 Q. Right. And do you know what information</p> <p>17 is provided on the large scoreboard?</p> <p>18 A. Yes.</p> <p>19 Q. What?</p> <p>20 A. Depending on the instance during the</p> <p>21 game, I have looked at photographs of that</p> <p>22 scoreboard on the Internet and there is replays,</p> <p>23 there are all kinds of statistics about players,</p>	<p>1 there are player line ups, there are all kinds of</p> <p>2 details that baseball players seem to really get</p> <p>3 into analysis of what is going on, there is pitcher</p> <p>4 information, there is pitch information, there is</p> <p>5 batter information, lots of things like that on that</p> <p>6 scoreboard that I don't believe were actually being</p> <p>7 communicated effectively on the TVs.</p> <p>8 Q. Do you know?</p> <p>9 A. I can look at them and tell based on the</p> <p>10 amount of information that shows up on the Internet</p> <p>11 views of that large scoreboard, and I can look at</p> <p>12 the distance to the televisions from the wheelchair</p> <p>13 positions, and the relative size, and if they put</p> <p>14 the same information on the HD TVs, if those are</p> <p>15 really HD TVs, and I don't know, but if they put HD</p> <p>16 TVs there, you couldn't read the statistics as</p> <p>17 sparsely -- as sparsely located as those television</p> <p>18 screens are, you couldn't read those statistics if</p> <p>19 they were on them.</p> <p>20 Q. Is that your speculation, correct? You</p> <p>21 haven't actually sat in any of those seats and</p> <p>22 looked at those monitors during a game, right?</p> <p>23 A. I have not looked at those monitors</p>



James Terry

6/14/2019

Pages 157 to 160

Page 157

1 during a game. They were not on in the six and a  
 2 half hours I was allowed to spend there.  
 3 Q. And there was no game going on when you  
 4 were there, right?  
 5 A. There was no game going on. But I looked  
 6 at the relative size of these compared to the  
 7 relative size of the scoreboard, and then I looked  
 8 at the images of the scoreboard and said, well, if  
 9 they put that information on that little tiny screen  
 10 that is sitting X-ty feet away, you couldn't read  
 11 it, unless you have super human eyesight.  
 12 Q. How far is the screen from the accessible  
 13 seating?  
 14 A. Depends on which seat you are in.  
 15 Q. Did you measure it from any seat?  
 16 A. Did not measure it.  
 17 Q. Got it. And do you know how large the  
 18 screen is?  
 19 A. No.  
 20 Q. Didn't measure that?  
 21 A. Did not measure it.  
 22 Q. And have not ever seen what is on the  
 23 screen during a game, so you don't know what is on

Page 158

1 it?  
 2 A. I don't recall if I have seen any  
 3 photographs of what is on it. And I am sure that it  
 4 changes throughout the game.  
 5 Q. Again, I am just trying to pen down what  
 6 you know and what you don't know.  
 7 A. Sure.  
 8 Q. I believe you don't know what is on the  
 9 screen during the game, do you?  
 10 A. I don't know what all is on that screen  
 11 during the game.  
 12 Q. Okay. Let's talk about the drink rails on  
 13 the 200 level. So as I understand it, your opinion  
 14 is what is on twenty-two in the last paragraph, is  
 15 that right? It is the paragraph that begins, if  
 16 fixed drink rails were installed, et cetera, that  
 17 paragraph?  
 18 A. That is -- that was my opinion as of the  
 19 time I wrote this report.  
 20 Q. Okay. And do you have any different  
 21 opinion today?  
 22 A. Based on additional information about  
 23 operation, I understand that those counters are not

Page 159

1 served for consumption at that location. So rather  
 2 than having waitresses coming by and bringing your  
 3 drinks for you to consume it right there where you  
 4 are sitting, you may have to go somewhere else. So  
 5 they may not be required to meet 5.2, they may be  
 6 required to meet 5.1.  
 7 Q. Right. And you don't know, though?  
 8 A. I don't know because I haven't watched to  
 9 see if anybody actually goes around and serves  
 10 people at those drink rails. If they don't, they  
 11 have to comply with 5.1, if they do, they have to  
 12 comply with 5.2. Either way they don't comply with  
 13 either of those two sections.  
 14 Q. But they may be safe harbored?  
 15 A. I am sorry?  
 16 Q. I believe your opinion is that they may  
 17 be safe harbored?  
 18 A. 5.1 and 5.2 are both safe harbor  
 19 sections. Those don't apply unless they are safe  
 20 harbored. Those are the safe harbored sections. It  
 21 if it didn't comply with 5.2 under '91, then it had  
 22 to comply with 5.1 under '91. When I was writing my  
 23 report, prior to reading Mr. Endelman's report, I

Page 160

1 believed that this, like so many other bars, had  
 2 waitresses that came around and brought your drinks  
 3 to you so they were served for consumption at the  
 4 drink rail, but from what he said, no, they are  
 5 never served there, then that means rather than 5.2  
 6 it has to go to 5.1, which has slightly different  
 7 requirement, but it still has a low section  
 8 requirement and those low sections were not there.  
 9 Q. I see. So when you wrote your report you  
 10 were assuming there was bartender service or service  
 11 at those rails?  
 12 A. I was.  
 13 Q. Right. And then you didn't say anything  
 14 about 5.1 in here, right?  
 15 A. Right, because of my understanding of  
 16 what was going on. I mean, it was a bar. I mean,  
 17 if you are going to make money, you drink -- bring  
 18 the drinks to the people. I assumed it worked like  
 19 most bars do. But your expert said that doesn't ever  
 20 happen, so then it is 5.1.  
 21 Q. On the question of concession lines, you  
 22 said that none of the queue lines stands were in  
 23 place during your visit?

James Terry

6/14/2019

Pages 161 to 164

<p style="text-align: right;">Page 161</p> <p>1 A. That is correct.</p> <p>2 Q. And so you don't actually have any</p> <p>3 personal knowledge of whether or not the queue lines</p> <p>4 and stanchion placements in operation are</p> <p>5 satisfactory or not, right?</p> <p>6 A. Define personal knowledge.</p> <p>7 Q. You didn't measure it, you never saw it,</p> <p>8 right?</p> <p>9 A. I am looking at two photographs in my</p> <p>10 report.</p> <p>11 Q. Yep. And did you measure anything out of</p> <p>12 those photographs?</p> <p>13 A. I don't need to measure those. Those are</p> <p>14 clearly non compliant widths.</p> <p>15 Q. Got it. So you don't know, for example,</p> <p>16 if those widths were corrected after the picture was</p> <p>17 taken or if they exist today, right?</p> <p>18 A. I don't know that they exist today. I</p> <p>19 don't know if they have been corrected. What I see</p> <p>20 is a problem that I reported on in my report, that</p> <p>21 they are not all always set up to be compliant.</p> <p>22 Q. Or that they don't always remain set up,</p> <p>23 right?</p>	<p style="text-align: right;">Page 162</p> <p>1 A. That is correct.</p> <p>2 Q. They are mobile stanchions, correct?</p> <p>3 A. That is correct, they could be moved.</p> <p>4 Q. Got it. So what we know is, based upon</p> <p>5 your report, you did not observe any stanchions</p> <p>6 during your visit, and you believe that based upon</p> <p>7 your eyeing pictures taken by Ms. Cummings at a</p> <p>8 single game last August, that those were non</p> <p>9 compliant as shown in those pictures, that is your</p> <p>10 opinion?</p> <p>11 A. Not just by looking at the photographs,</p> <p>12 but by talking to Ms. Cummings and her reporting</p> <p>13 that there were instances like this that she photo</p> <p>14 documented when she saw them.</p> <p>15 Q. And we have documentation of two places</p> <p>16 within the stadium on a day in August last summer,</p> <p>17 correct?</p> <p>18 A. That is correct.</p> <p>19 Q. Is there some listing of some other</p> <p>20 locations other dates?</p> <p>21 A. I don't have one.</p> <p>22 Q. Okay. Do you know if -- do you know if</p> <p>23 the Mariners have a policy with respect to the</p>
<p style="text-align: right;">Page 163</p> <p>1 placement of the stanchions?</p> <p>2 A. I saw from Mr. Endelman's report that</p> <p>3 they have a procedure to set those up correctly.</p> <p>4 Q. Okay. And you don't have any reason to</p> <p>5 doubt that, do you?</p> <p>6 A. I don't have a reason to doubt the fact</p> <p>7 that they have a policy and that they have trained</p> <p>8 some people to do it. I have serious doubts that</p> <p>9 they are actually succeeding at a level required for</p> <p>10 compliance.</p> <p>11 Q. And let me ask you this, how would you</p> <p>12 remedy that?</p> <p>13 A. Lot of different ways you could remedy</p> <p>14 it.</p> <p>15 Q. Give me an example, that would be</p> <p>16 sufficient.</p> <p>17 A. Okay. You could create a device that is</p> <p>18 the right width and you could put a diagram on it</p> <p>19 that shows people how to set things up, how to</p> <p>20 measure it. You could train them on how to use that</p> <p>21 device and then just have them go through the park</p> <p>22 throughout the games and say, here, just go through</p> <p>23 and check. You know, run this thing that is 36</p>	<p style="text-align: right;">Page 164</p> <p>1 inches wide or 48 inches wide or however you are</p> <p>2 setting up the stanchions, run this thing through</p> <p>3 the opening and if it touches, if the ends of it</p> <p>4 touch the end of the counter and the stanchion</p> <p>5 support, then it is too small, move it.</p> <p>6 Q. Okay. Do you know if that is done?</p> <p>7 A. I know that that was required by the</p> <p>8 Judge in the Macy's West case where they had aisles,</p> <p>9 retail aisles done that way.</p> <p>10 Q. Sir, I am asking you if you know if it is</p> <p>11 done at the stadium?</p> <p>12 A. I don't know if it is done at this</p> <p>13 stadium, nobody said it was.</p> <p>14 Q. I just asked if you knew. That is all.</p> <p>15 A. No, sorry, I don't know.</p> <p>16 Q. And you don't know what is going on this</p> <p>17 season either, right?</p> <p>18 A. I don't.</p> <p>19 Q. Okay. You have a section in your report</p> <p>20 about accessible routes to the stadium, it is like</p> <p>21 section thirteen, I believe, on page twenty-five.</p> <p>22 A. Yes.</p> <p>23 Q. And you refer to hundreds or thousands of</p>

**James Terry****6/14/2019**

Pages 165 to 168

Page 165	Page 166
<p>1 linear feet of non compliant gaps, end quote; do you</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. I mean, there is a difference, is it</p> <p>5 hundreds or thousands?</p> <p>6 A. In six and a half hours I couldn't</p> <p>7 measure.</p> <p>8 Q. Got it. So you don't know?</p> <p>9 A. It is at least hundreds. My guess would</p> <p>10 be it is thousands, but again, I didn't have time to</p> <p>11 try to do a calculation on it.</p> <p>12 Q. Understood. So the answer is you are just</p> <p>13 not sure, you don't know?</p> <p>14 A. I don't know which of those it is.</p> <p>15 Q. Okay. Does your report identify where</p> <p>16 these areas are?</p> <p>17 A. Let's see, if you look at the photographs</p> <p>18 you can see some places where the surfaces, where</p> <p>19 you will get clues from the counters that are there,</p> <p>20 I did not list all the places where I found it. I</p> <p>21 really -- it would have taken many, many more pages</p> <p>22 to do that. These problems --</p> <p>23 Q. I am not interested in the reasoning, I</p>	<p>1 want to know whether you did.</p> <p>2 A. I did not, other than what you can tell</p> <p>3 from the photographs.</p> <p>4 Q. Right. But there is no listing anywhere</p> <p>5 of where this -- these gaps exist?</p> <p>6 A. Not in my report.</p> <p>7 Q. Okay. And you don't have a record of</p> <p>8 that?</p> <p>9 A. I didn't say that.</p> <p>10 Q. Well, do you?</p> <p>11 A. I do. I have photographic records of lots</p> <p>12 of places where I took pictures of these.</p> <p>13 Q. I understand. But apart from photographic</p> <p>14 records, and there are some in here, do you have</p> <p>15 listings, for example, where I could say to you, you</p> <p>16 know what, I would like to go out there tomorrow and</p> <p>17 make sure that everything you have identified has</p> <p>18 been fixed or will be fixed, please give me the list</p> <p>19 of sites, could you do that?</p> <p>20 A. I could put together a list of the places</p> <p>21 that I photographed and look at those places, but I</p> <p>22 would have to take my photographs and match them up</p> <p>23 to be able to do that though.</p>
Page 167	Page 168
<p>1 Q. Right. Right. You would try and use clues</p> <p>2 from the photographs to figure out where they were?</p> <p>3 A. They are pretty good clues if you can see</p> <p>4 where the photograph is taken.</p> <p>5 Q. All I am saying is what you are doing --</p> <p>6 A. Yes, yes, in the tiny amount of time I</p> <p>7 had in the facility, I did not list all of the</p> <p>8 locations they were found.</p> <p>9 Q. All right. And in fact, you didn't list</p> <p>10 any of the locations they were found?</p> <p>11 A. In my report, I did not.</p> <p>12 Q. Okay. Do you know whether or not any of</p> <p>13 those gaps have been repaired?</p> <p>14 A. I have not been there, I don't know.</p> <p>15 Q. Okay. So you did not look at the bullpen</p> <p>16 when you were there?</p> <p>17 A. I did not go into the bullpen when I was</p> <p>18 there.</p> <p>19 Q. Right. You didn't assess it, right?</p> <p>20 A. I did not look at the last step into the</p> <p>21 bullpen.</p> <p>22 Q. You don't know even if there is a step</p> <p>23 into the bullpen?</p>	<p>1 A. I was told that there was a step into the</p> <p>2 bullpen. I was led to believe while I was there</p> <p>3 that there was not. I did not go all the way.</p> <p>4 Q. So you didn't look?</p> <p>5 A. I am sorry?</p> <p>6 Q. You did not look?</p> <p>7 A. I did not go all the way to look at the</p> <p>8 last step into the bullpen. Is there --</p> <p>9 Q. You don't know if there is a step though,</p> <p>10 right?</p> <p>11 A. I have been told there is a step, I did</p> <p>12 not look at it myself.</p> <p>13 Q. Got it. So you did not go to see whether</p> <p>14 the thing you were told is true or not?</p> <p>15 A. I did not go all the way there to see it.</p> <p>16 Q. Okay. So the dugouts do not presently</p> <p>17 have a lift from the field surface into the dugouts,</p> <p>18 correct?</p> <p>19 A. That is correct, as of the day of my</p> <p>20 survey.</p> <p>21 Q. Understood. Understood. And the</p> <p>22 complaint, as I understand it, is that because there</p> <p>23 are stadium tours that permit access to the general</p>

**James Terry****6/14/2019**

Pages 169 to 172

<p style="text-align: right;">Page 169</p> <p>1 public there should be a lift; is that correct?</p> <p>2 A. There should be a -- an accessible route</p> <p>3 is required into the dugout if that is a part of a</p> <p>4 tour or if it is part of the area that is used by</p> <p>5 the performers, in this case. So yes, an accessible</p> <p>6 route is required. Doesn't have to be a lift. It can</p> <p>7 be done many ways.</p> <p>8 Q. Understood. And would that be true even</p> <p>9 if no members of the general public ever used that</p> <p>10 area?</p> <p>11 A. Yes.</p> <p>12 Q. And if there were only professional</p> <p>13 baseball players in that area?</p> <p>14 A. Yes.</p> <p>15 Q. Got it. When you were in the stadium, did</p> <p>16 look at Lookout Landing?</p> <p>17 A. Remind me what Lookout Landing is.</p> <p>18 Q. It is a space that is -- I believe it is</p> <p>19 upper level N out past center field.</p> <p>20 A. I see that. It is surrounded by section</p> <p>21 347.</p> <p>22 Q. Did you go there?</p> <p>23 A. I don't recall. Is there a -- did I say</p>	<p style="text-align: right;">Page 170</p> <p>1 anything about it in my report?</p> <p>2 Q. No, I didn't see it in there, that is why</p> <p>3 I was wondering.</p> <p>4 A. I don't recall if I went there or not.</p> <p>5 Q. Did you observe or make any opinions</p> <p>6 about seating accessibility in Lookout Landing?</p> <p>7 A. Like I said, I don't recall.</p> <p>8 Q. If it is not in your report, you didn't</p> <p>9 do it, right?</p> <p>10 A. No, there are things that I looked at</p> <p>11 that I didn't put in my report.</p> <p>12 Q. Do you have an opinion about the</p> <p>13 availability of seating in Lookout Landing?</p> <p>14 A. I see that it is indicated on your</p> <p>15 exhibit -- Defendant's Exhibit or Terry deposition</p> <p>16 Exhibit 4, I see it as a wheelchair at the back of</p> <p>17 section 347. I don't know what that refers to. Let</p> <p>18 me see if it shows up in ours -- in my report. I</p> <p>19 don't have any information. It looks like the</p> <p>20 wheelchair symbol shown on Exhibit 4 for section 347</p> <p>21 is actually part of the seating in 347, so it is not</p> <p>22 indicated on my attachment G as being wheelchair</p> <p>23 accessibility in the Lookout Landing. I -- so, you</p>
<p style="text-align: right;">Page 171</p> <p>1 know, my opinion is that I don't see anything</p> <p>2 related to wheelchairs in that area, but I -- that</p> <p>3 wasn't one of the questions I was asked to resolve.</p> <p>4 Q. If you didn't look at it and don't know,</p> <p>5 that is fine. Do you know if there is ticketed</p> <p>6 seating in Lookout Landing?</p> <p>7 A. I don't know. There was nothing that we</p> <p>8 found for Lookout Landing -- let me check and make</p> <p>9 sure I am not talking -- our notes said that the</p> <p>10 existing seating was zero, reception set up was 150,</p> <p>11 rounds 80, theater set up 100, and that was based on</p> <p>12 the MLB Mariners Ballpark Event Spaces. So</p> <p>13 apparently it is temporary seating that is there and</p> <p>14 not -- now I don't know whether you -- whether those</p> <p>15 kinds of set up become ticketed through some process</p> <p>16 that is not a Ticketmaster process that we could</p> <p>17 easily see, whether that is some other ticketing</p> <p>18 process, I don't know about that.</p> <p>19 Q. Yeah, again, I am not asking you to</p> <p>20 speculate, you just don't know?</p> <p>21 A. I don't know anymore than what my report</p> <p>22 shows.</p> <p>23 Q. Okay. Does your report have -- offer any</p>	<p style="text-align: right;">Page 172</p> <p>1 opinion about whether or not there is appropriate</p> <p>2 accessible seating in Lookout Landing?</p> <p>3 A. It does not.</p> <p>4 Q. Does your report offer any opinion on</p> <p>5 whether there is accessible seating in the pen?</p> <p>6 A. The pen?</p> <p>7 Q. That is the area that is on the first</p> <p>8 level ground floor right behind and around the</p> <p>9 bullpen.</p> <p>10 A. So it is also called Patio at the Pen?</p> <p>11 Q. I think Patio at the Pen is actually part</p> <p>12 of it.</p> <p>13 A. Okay. I did have some -- I did have</p> <p>14 photographs that I took there and I think there</p> <p>15 were -- there were seats that were stacked there</p> <p>16 when I was -- when I was there.</p> <p>17 Q. Understood. And all I am trying to</p> <p>18 understand is do you have an opinion about it? I</p> <p>19 don't think you do because it is not mentioned, but</p> <p>20 I want to clarify.</p> <p>21 A. I will have to go through and see. You</p> <p>22 know, if you can point me to the section where that</p> <p>23 comes up we might speed the process up a little bit,</p>

**James Terry****6/14/2019**

Pages 173 to 176

Page 173	Page 174
<p>1 but --</p> <p>2 Q. I don't believe there is any section in</p> <p>3 which it comes up, that is why I am asking the</p> <p>4 question.</p> <p>5 A. There were sections where we talked about</p> <p>6 rails blocking the views of people. It seems to me</p> <p>7 like that might have been one of the problems there,</p> <p>8 but I can't recall if -- without going back and</p> <p>9 looking at it specifically.</p> <p>10 Q. Well, section nine of your report on page</p> <p>11 twenty-one.</p> <p>12 A. Okay.</p> <p>13 Q. Right, refers to drink rails, I do not</p> <p>14 see any reference there to the pen, is there some</p> <p>15 reference I am missing?</p> <p>16 A. Yes, do high drink rails, particularly on</p> <p>17 the 200 level, particularly is not an exclusive</p> <p>18 term.</p> <p>19 Q. I know it is not.</p> <p>20 A. Okay.</p> <p>21 Q. I know it is not. Do you have an opinion</p> <p>22 about whether or not there is accessible seating in</p> <p>23 the pen?</p>	<p>1 A. I don't have any information that showed</p> <p>2 that there was fixed seating in the pen. I don't</p> <p>3 know whether there was movable seating in the pen,</p> <p>4 other than if that is the place that we went through</p> <p>5 very quickly and identified as having movable</p> <p>6 seating, and I am now looking at my report. Existing</p> <p>7 seating 60, reception 2000, rounds 80, theater 200,</p> <p>8 I think that was one of those areas where we just</p> <p>9 didn't have time to thoroughly analyze it. So I</p> <p>10 don't have an opinion, other than those opinions</p> <p>11 that are general in my report, that refer to general</p> <p>12 opinions that may have applied to that section.</p> <p>13 Q. Can you identify for me any opinion in</p> <p>14 your report that applies to the pen?</p> <p>15 A. I would say this section does.</p> <p>16 Q. How do you know that? It doesn't mention</p> <p>17 the pen, are you aware of there being high drink</p> <p>18 rails in the pen?</p> <p>19 A. Yes, there are high drink rails in the</p> <p>20 pen.</p> <p>21 Q. Where is that in your report?</p> <p>22 A. The pen's location has rails separating</p> <p>23 it from the areas where the pitchers go to warm up,</p>
Page 175	Page 176
<p>1 the pen, and the field, and those rails, by</p> <p>2 definition, are going to be high -- high guards</p> <p>3 for -- to keep people from going off the edges. So,</p> <p>4 yes, I have an opinion that there are high rails</p> <p>5 there.</p> <p>6 Q. Are there high drink rails there?</p> <p>7 A. If I remember correctly, they were set up</p> <p>8 as -- some of them were set up as places that you</p> <p>9 could put your drink, some of them were not set up</p> <p>10 for drinks. For instance, seems like there is some</p> <p>11 sort of a scoreboard in front of that, I may be</p> <p>12 thinking about -- no, I think that is where it</p> <p>13 was -- some sort of scoreboard below it and that, if</p> <p>14 I recall correctly, did not have a drink rail on top</p> <p>15 of it, I assumed because they didn't want people</p> <p>16 putting their drinks there and spilling them on the</p> <p>17 face of the scoreboard, but there were other places</p> <p>18 where there were rails set up in that area. I would</p> <p>19 have to look at my photographs for more details.</p> <p>20 Q. Are there any pictures in your report of</p> <p>21 this?</p> <p>22 A. I don't believe so.</p> <p>23 Q. And there is no mention of that in your</p>	<p>1 report, right?</p> <p>2 A. Specific mention, I would have to go back</p> <p>3 through and look.</p> <p>4 Q. You are not aware of one, are you?</p> <p>5 A. I would have to go back through and look</p> <p>6 to see if it was there. I don't recall a specific</p> <p>7 reference to the pen, other than the one that I just</p> <p>8 read to you --</p> <p>9 Q. Which --</p> <p>10 A. I am sorry?</p> <p>11 Q. It makes no reference to the pen, does</p> <p>12 it?</p> <p>13 A. Exhibit or Attachment F?</p> <p>14 Q. Right.</p> <p>15 A. Right-hand side, bottom, event spaces and</p> <p>16 hospitality seating at T Mobile park, third bolded</p> <p>17 item, the pen.</p> <p>18 Q. I am sorry, you are looking at Attachment</p> <p>19 F?</p> <p>20 A. Attachment F.</p> <p>21 Q. This is the ticket pricing.</p> <p>22 A. It is multiple things. It is multiple</p> <p>23 things, including seat counts, ticket prices, and</p>

**James Terry****6/14/2019**

Pages 177 to 180

Page 177	Page 178
<p>1 event spaces and hospitality seating.</p> <p>2 Q. Right. And I understand that you have</p> <p>3 some information on the bottom right side about the</p> <p>4 pen?</p> <p>5 A. That is correct.</p> <p>6 Q. Right. Is there anything else other than</p> <p>7 that in the report about the pen?</p> <p>8 A. I don't recall it, not anything else</p> <p>9 specifically calling out the pen as being a location</p> <p>10 where a particular violation occurred.</p> <p>11 Q. Right. So if you were reading this</p> <p>12 report, you would not have an idea of there being</p> <p>13 any violation of the pen, because nothing is</p> <p>14 mentioned, right?</p> <p>15 A. I wouldn't say that.</p> <p>16 Q. Got it. So you would just infer, take</p> <p>17 your language and apply it anywhere, right, there is</p> <p>18 no record here that I can see of you identifying a</p> <p>19 problem in the pen, and if there is, let me know, I</p> <p>20 just want to know where it is?</p> <p>21 MR. REYNOLDSON: Objection.</p> <p>22 Mischaracterizes earlier testimony.</p> <p>23 Q. You have shown me Attachment F where it</p>	<p>1 contains the word the pen, but there is no other</p> <p>2 mention in the report, is there?</p> <p>3 A. There is no other specific mention of</p> <p>4 specific barrier types in the pen in the report,</p> <p>5 that I can recall. The report has many, many</p> <p>6 references to things that are barrier types found</p> <p>7 throughout the facility. I would say you need to</p> <p>8 look at those barrier types, wherever they occur. I</p> <p>9 would not exclude the pen just because it wasn't</p> <p>10 simply listed in the report.</p> <p>11 Q. All I am asking is whether or not you</p> <p>12 identified any particular barriers in the pen and</p> <p>13 the answer is, I understand it, you did not,</p> <p>14 although you think maybe it is possible?</p> <p>15 A. I didn't identify any others, that I</p> <p>16 recall, in my report, specifically by name.</p> <p>17 Q. Got it. And you didn't identify any</p> <p>18 violations regarding the pen, right?</p> <p>19 A. Not by name, that I recall, in my report.</p> <p>20 Q. Right. And you have not otherwise</p> <p>21 identified a particular violation with respect to</p> <p>22 the pen?</p> <p>23 A. I don't recall any reference -- specific</p>
Page 179	Page 180
<p>1 references to violations of the standards in the</p> <p>2 pen.</p> <p>3 Q. Thank you. Let's do this, let's take</p> <p>4 a three minute break and I may be done. I want</p> <p>5 to check my notes, but I am cautiously hopeful</p> <p>6 we will conclude it.</p> <p>7 (Short break.)</p> <p>8 Q. Mr. Terry, did you observe whether or</p> <p>9 not there was -- was Edgar's Cantina a set up</p> <p>10 for operation when you were there?</p> <p>11 A. First of all, there was some question</p> <p>12 about what is actually called Edgar's Cantina.</p> <p>13 There were two levels, both of which seemed to</p> <p>14 be labeled as Edgar's, one of them I think was</p> <p>15 Cantina, one of them may be Homerun Porch, and</p> <p>16 so I can't recall exactly which one was the</p> <p>17 upper level and which one was the bottom level.</p> <p>18 Q. The one on the bottom level is the</p> <p>19 Cantina and the one on the upper level is</p> <p>20 Homerun Porch.</p> <p>21 A. Okay. All right. There were tables</p> <p>22 set up. There were things, you know, I have</p> <p>23 photographs of tables being set up, there were</p>	<p>1 displays on top of the bar counter, displays,</p> <p>2 equipment, looked maybe things for pretzels or</p> <p>3 something like that that were wrapped up. So it</p> <p>4 looked like some of the pieces of the set up</p> <p>5 were there, some of them still wrapped, some of</p> <p>6 them clearly missing.</p> <p>7 Q. Is there a lower drink rail in the</p> <p>8 Cantina?</p> <p>9 A. I did not see one.</p> <p>10 Q. Do you know if there are -- if there</p> <p>11 is accessible seating setup on the porch area of</p> <p>12 the Cantina outside?</p> <p>13 A. I did not see what appeared to be</p> <p>14 compliant -- evidence of compliant seating while</p> <p>15 I was there.</p> <p>16 Q. On February 5, do you know if when</p> <p>17 the Cantina is in operation if there is</p> <p>18 accessible seating on that porch area?</p> <p>19 A. I do not.</p> <p>20 Q. Do you know if there is accessible</p> <p>21 seating and tables on the Homerun Porch?</p> <p>22 A. I do not.</p> <p>23 MR. WILLEY: Okay. Mr. Terry, I</p>



**James Terry****6/14/2019**

Pages 181 to 182

Page 181	Page 182
<p>1 think that concludes the deposition for today. I</p> <p>2 thank you for your time and willingness to do</p> <p>3 this by video on a Friday. Much appreciate your</p> <p>4 input.</p> <p>5 THE WITNESS: Okay.</p> <p>6</p> <p>7 (The deposition concluded at</p> <p>8 6:45 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 CERTIFICATE</p> <p>20</p> <p>21 STATE OF ALABAMA )</p> <p>22</p> <p>23 COUNTY OF JEFFERSON )</p>	<p>1 foregoing deposition was taken down by me in</p> <p>2 stenotype and the questions and answers thereto</p> <p>3 were reduced to typewriting under my</p> <p>4 supervision; that the foregoing represents a</p> <p>5 true and correct transcript of the deposition</p> <p>6 given by said witness upon hearing.</p> <p>7 I further certify that I am neither of</p> <p>8 counsel nor of kin to the parties to the action,</p> <p>9 nor am I in anywise interested in the result of</p> <p>10 said cause.</p> <p>11</p> <p>12 _____</p> <p>13 /s/Caila M. Bonds</p> <p>14 Caila M. Bonds, CCR</p> <p>15 CCR # 250, Expires 09/30/2019</p> <p>16 Commissioner for the State of</p> <p>17 Alabama at Large</p> <p>18 My Commission Expires: 3/29/2022</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on June 21, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.



Rondi A. Greer